

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOCELYN TOMPKIN,)
)
Plaintiff,)
)
vs.) CIV. ACTION NO.
) 5:94-CV-1302
THE AMERICAN,)
TOBACCO COMPANY, et al.,)
)
Defendants.)

The discovery deposition of TIMOTHY P. MEYER,
Ph.D. taken in the above-entitled cause, before
Anastasia Maros, a Certified Shorthand Reporter and
Notary Public of Cook County, Illinois, on the 18th
day of June 2001, at the O'Hare Hilton Hotel,
Chicago, Illinois, at the hour of 1:00 p.m.

O'HARE-SPHERION REPORTING (847) 635-0828

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1 I N D E X
2 WITNESS EXAMINATION
3 TIMOTHY P. MEYER
4 By Mr. Smith 7
5 Mr. Proctor 185
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9 E X H I B I T S
10 NUMBER MARKED FOR ID
11 Plaintiff's Exhibit Meyer
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1 MR. SMITH: Stacy, this was brought up
2 the other day when we took one of these by the
3 court reporter, and I suspect we ought to put
4 it on the record.

5 It's my understanding that there will
6 be no exchange of papers or any form of verbal
7 communication between the attorneys and the
8 witness during the course of the deposition,
9 with the exception if an exhibit is requested,
10 that the attorneys may have it. Although I
11 would think the witness probably has the
12 documents. Does that sound agreeable?

13 MR. PROCTOR: Yes, I think so. I mean
14 other than the types of things that we would
15 normally do at a deposition, like you said,
16 with regard to exhibits.

17 MR. SMITH: I can't think of anything
18 else that would be -- you know, if an exhibit
19 was asked for. But I can't think of an
20 exhibit that the attorney would have that the
21 lawyer wouldn't have -- I mean that the
22 witness, excuse me. Does that sound okay?

23 MR. PROCTOR: Yeah, I think so.

24 MR. SMITH: If you'd swear the witness
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1 in, please.

2 (Witness sworn.)
3 MR. SUFFERN: I'm sorry to interrupt,
4 Russ. This is Mike Suffern again.
5 I just thought that while we're on
6 the record, we should put the stipulation
7 regarding an objection -- we had an
8 off-the-record discussion in which we agreed
9 that an objection for one defendant shall be
10 deemed as an objection of each defendant.
11 And plaintiff's counsel, I believe,
12 consented to that stipulation unless something
13 arose during the deposition that would cause
14 him to change his mind, in which case he would
15 apprise us that he has changed his mind.
16 Is that a fair recitation of our
17 stipulation, Mr. Smith?
18 MR. SMITH: Yes.
19 MR. SUFFERN: Thank you.
20 MR. SMITH: I believe the witness has
21 stated his name?
22 THE COURT REPORTER: Not yet.
23 MR. SMITH: Okay, we'll swear him in
24 then.

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1 THE COURT REPORTER: I did.
2 TIMOTHY PAUL MEYER,
3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:
5 EXAMINATION
6 BY MR. SMITH:
7 Q. Okay, now he'll state his name. I'll
8 catch up with you.
9 A. Timothy P. Meyer.
10 Q. And the "P" stands for what, sir?
11 A. Paul.
12 Q. And your address?
13 A. My home address or university address?
14 Q. Home address and university address,
15 please.
16 A. Sure. Home address is DELETED.
17
18 Q. Could you spell that, please.
19 A. Sure. DELETED.
20
21
22
23
24 Q. And your business address?

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1 A. My university address is Department of
2 Communication, Theater Hall 331, University of
3 Wisconsin, Green Bay. And it's Green Bay,
4 Wisconsin. And that zip is 54311-7001.
5 Q. That's Department of Communication,
6 Theater Hall 331?
7 A. Yes, Department of Communication, and
8 it's located in Theater Hall, 331. That's the
9 office number and building.
10 Q. That's at the University of Wisconsin?
11 A. University of Wisconsin, Green Bay.
12 Q. Would you tell us what you brought with

13 you today, please.
14 A. Yes. I brought with me two things, a
15 copy of my expert report and a copy of my
16 curriculum vitae.
17 Q. Have you brought your file with you
18 today?
19 A. That's all I have in my file.
20 Q. That's your entire file?
21 A. That is my entire file.
22 Q. Has your file ever had anything else in
23 it over and above a report and a CV?
24 A. No.
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1 Q. You have no communications from the
2 counsel for -- on behalf of the tobacco company?
3 A. I have none, that is correct, sir.
4 MR. SMITH: I suppose, for clarity's
5 sake, if you'd please -- I'd ask you, Stacy,
6 if you'd please mark the report as Plaintiff's
7 Exhibit 1, Meyer, with today's date on it, and
8 if you would please mark the CV with just
9 everything else the same except we'll mark it
10 2.
11 (Whereupon, Meyer
12 Exhibits 1 & 2 were marked
13 for identification.)
14 MR. PROCTOR: I was just going to ask the
15 witness if these were clean copies of the
16 report and the CV.
17 It may not matter to you, Mr. Smith,
18 but are these clean copies? If you wanted to
19 mark clean copies as an exhibit.
20 BY MR. SMITH:
21 Q. You mean -- do you have notes on these?
22 A. I believe there are no notes on either of
23 these.
24 Q. Do you have any reports with notes on
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1 them?
2 A. No, I do not.
3 Q. You prepared a report originally in '98?
4 A. Yes, sir.
5 Q. And then you prepared a new one?
6 A. Yes, I did.
7 Q. And the basic differences between the
8 two?
9 A. I updated some of the references in a
10 couple of different sections.
11 Q. I notice that some places in your
12 report -- if you'll use for a reference the example
13 on, oh, take page 6 -- middle of the first full
14 paragraph where it says, "See Thomas and Larsen,
15 1993," are you referring to the Thomas and Larsen
16 that you have attached to your report?
17 A. I believe that is the reference.
18 Q. I guess it's kind of important to know
19 that.
20 A. Yes, it is.
21 Q. When you use that type of language, I'm
22 assuming that you're referring to your list of
23 illustrative references that's attached to the

24 beginning of page 10 of your report?
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1 A. Yes, that's correct.
2 Q. Did you -- withdraw that.
3 Where did you grow up?
4 A. I grew up in Wisconsin, a town 60 miles
5 to the south of Green Bay called Sheboygan.
6 Q. You went to high school there?
7 A. I did. Elementary; junior high, as we
8 used to call it back then; and high school.
9 Q. And your date of birth?
10 A. December 30th, 1944.
11 Q. Do you know Dr. Hoff from Ohio
12 University?
13 A. I do not.
14 Q. What caused you to go into communication
15 at the University of Wisconsin?
16 A. I had -- in high school, I had
17 participated in both debate and forensics and
18 actually had taken a communications class in high
19 school.
20 And then when I went to college, I
21 started out as a music major because I was also
22 active in music in high school and thought that I
23 would be a music major, but I was very heavily
24 involved in forensics and debate at the university
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1 level, and it seemed to be a major that matched up
2 naturally with communication.
3 And from that I had an interest in
4 working in radio. There was a student radio
5 station on campus, and so I worked in radio. And
6 that shifted my interests away from the debate and
7 forensics side to the mass media side.
8 Q. What was your involvement in forensics in
9 high school?
10 A. I participated in original oratory and
11 also in an event called extemporaneous speaking
12 where you're given -- you draw a topic from a list
13 of topics, and you're given about 45 minutes to
14 prepare a five- to seven-minute speech on the
15 topic. And I think that was it in terms of
16 forensics.
17 Q. How about in college?
18 A. In college, I did a number of events.
19 One was called radio newscasting, another was
20 original oratory. And then also extemporaneous
21 speaking in college in addition to being on the
22 debate team.
23 Q. The first part was your forensics
24 experience in college?
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1 A. That's correct.
2 Q. And you minored in history in college?
3 A. I did.
4 Q. The reason that was your minor, or that
5 you either minored or majored in history?
6 A. Yeah, I minored in history as an
7 undergraduate, in part, because some of the courses
8 that I was taking to fulfill general education

9 requirements at the university, there were a couple
10 of professors in the history department who were
11 really great teachers.

12 And I enjoyed taking courses from
13 them and discovered that I had almost enough
14 credits for a minor in history, so I just completed
15 the remaining credits to qualify for the history
16 minor.

17 Q. And you say in high school you were
18 involved in debate, forensics, and music?

19 A. And music, yes.

20 Q. And you probably told me, but I didn't
21 pick up on it. What instrument did you play?

22 A. I played the trumpet from the -- started
23 in fourth grade and played it up all the way
24 through my freshman into my sophomore year of

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1 college.

2 Q. What were your other hobbies through
3 school up through high school -- grade school,
4 junior high, high?

5 A. Well, I had no participation in
6 athletics. One, probably because of a lack of
7 ability, and the other was that even where I had
8 some ability, it usually interfered with the band
9 director wanting me to be there for -- to play in
10 the marching band and in the Pep band for the
11 various athletic events.

12 Q. Did you have any jobs through grade
13 school, junior high, high school?

14 A. Yes. I worked in sixth grade as a paper
15 boy, delivered a daily paper. Then I umpired
16 little league baseball games, and also worked at a
17 locally owned like fast-food restaurant, and also
18 worked in the cafeteria as a server taking the
19 trays to patients in a hospital.

20 Q. How about in college and undergraduate
21 school, what type of work did you do, if any?

22 A. In college, I worked because it was
23 necessary for me to at least help support myself in
24 college.

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1 I worked -- continued over from my
2 summer job working at the restaurant, and I would
3 go home on weekends during my freshman and
4 sophomore year, at least in the fall and then again
5 in the spring when business was still good, and the
6 rest of the time that the restaurant was closed or
7 had limited hours of operation.

8 And it was back in Sheboygan, so I
9 would have to go from there in order to work there
10 on weekends.

11 And then after I graduated -- the
12 summer after I graduated from college, because I
13 had worked in radio, I got a job working in a
14 commercial radio station in Sheboygan working in
15 radio news.

16 Q. How about when you were getting your
17 master's degree at OU?

18 A. At Ohio University, I was involved --
19 first of all, my first year I was employed as a

20 teaching assistant, and I had responsibility for
21 teaching a basic communication class.
22 And I also worked the morning shift
23 Monday through Friday doing the early morning news
24 on the radio station in Athens Ohio, WOUB.

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1 Q. And then while you were getting your
2 doctor's degree?

3 A. The second year of graduate school, which
4 included finishing the master's degree and
5 continuing work on my Ph.D., I worked as a research
6 assistant for several faculty members in the school
7 of communication.

8 And then my final year of graduate
9 school that I was there when I was finishing my
10 Ph.D., I directed a project under a federal grant,
11 which was part of grants made available to the area
12 in which Ohio University resides. And I worked as
13 the director of this project.

14 Q. And that project was what, now?

15 A. The project was -- an interesting one
16 because it's still in effect. In fact, it's going
17 in much stronger force than when I got it off the
18 ground.

19 It was an experiment with using a
20 telecommunications system to extend medical and
21 health services from the university teaching
22 hospital in Columbus that was part of Ohio State
23 University, extending it to the rural areas of
24 southeastern Ohio.

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1 And this would enable a physician,
2 for example, in Athens, Ohio, to be at the hospital
3 in Athens and to receive some contact with a
4 specialist at the University Hospital in Columbus.
5 And they would do this via a television
6 transmission system. It was done via microwave
7 relay.

8 And I was the one that was
9 responsible for this project of setting it up on an
10 experimental basis and getting it off the ground to
11 see if it could work.

12 There was also another site down in
13 Gallipolis, Ohio, very near the border in
14 southeastern Ohio. And they also had a hospital, I
15 believe it was the Holter Clinic there, and they
16 also linked up to this network.

17 And it was an effective means of
18 extending, as I say, specialist care and
19 consideration for the treatment of patients where
20 doctors in the rural areas would be expected to
21 treat a wide variety of different illnesses and
22 problems that patients brought to them.

23 Q. Did you have any other jobs or activities
24 that you were involved in up through the time you

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1 got -- obtained your doctor's degree that we
2 haven't talked about?

3 A. Yes. I worked -- continued to work for
4 the television station, WOUB television, and I did

5 some news reporting, did some anchoring on the air,
6 did some weather, did some sports, also did some
7 play-by-play for the Ohio University football team
8 and for the baseball team.

9 Q. Did you ever have any interest in
10 becoming an attorney, a lawyer?

11 A. I think I thought about it when I was
12 heavily involved, especially in debate.

13 There were a number of people -- for
14 example, when I was a freshman in college, there
15 were people who were seniors at other universities,
16 and a lot of them, when they graduated, had applied
17 to and been admitted to law school.

18 And then, in fact, there were a few
19 people helping out colleges and universities as
20 debate coaches, at least part-time or something,
21 who were in law school at the time. So there
22 seemed to be kind of a natural tie-in. So I did
23 think about it for a while.

24 Q. About what point in time did you reject
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1 the idea?

2 A. I think it was -- it was probably during
3 my junior year when there was a member of the
4 faculty -- my undergraduate days -- and he was very
5 heavily involved in doing communications research.

6 And I was very intrigued by this idea
7 and used this man as a role model and thought that
8 that would be something that I could do.

9 I enjoyed the prospect of being able
10 to teach at the university level, and also to have
11 a career in which not only could I teach students,
12 but also contribute to original knowledge by doing
13 my own research and investigating things that I had
14 an interest in.

15 Q. What was it about communications research
16 that you liked?

17 A. There seemed to be so many different
18 avenues of things that I had an interest in and
19 wanted to understand more about, and these would
20 include some things like how people are affected in
21 different situations by communication; how the
22 media have an impact on people in terms of what
23 they think, what they talk about, what their
24 attitudes are, and what their behaviors are.

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1 Q. What was it about that that you liked so
2 much?

3 A. Well, it was the idea of looking at the
4 kinds of situations that would occur, and then
5 people would look for an explanation after the
6 fact.

7 Events would take place and -- a
8 movie would become very successful, for example, or
9 an advertising campaign would be very successful,
10 or some type of event would occur, and then people
11 would try to not only explain it, but also try to
12 duplicate it.

13 And I became very interested in the
14 idea of being able to explain and predict, which
15 is, of course, you know, the primary two-pronged

16 goal of social science research to begin with. So
17 it kind of naturally led into that as a career
18 which I became interested in.

19 Q. What did you like best about teaching?

20 A. It's what I still like best about
21 teaching.

22 It's the opportunity to not just be a
23 transmitter of knowledge and facts and information,
24 but also the process of watching students begin to

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1 discover things about themselves and their own
2 ability to ask questions and then to find ways to
3 get answers to those questions and ways in watching
4 them mature, and kind of what I always refer to as,
5 in quotes "get it."

6 And it's fun for me. It still is.
7 And I'll keep teaching as long as I possibly can
8 because it's a thrill for me to watch students get
9 it.

10 And by that I mean they simply come
11 to understand that the value of higher education
12 being all of the doors that are opened up to them
13 that they didn't know existed. And once they open
14 those doors and take a look inside, there are many,
15 many things that excite them and concern them.

16 And it has a -- not just an
17 immediate, but a long-term impact on how they live
18 their lives. And I find this to be particularly
19 gratifying.

20 Q. When is the first time you had any
21 involvement with -- I'll withdraw that.

22 What kind of work do your parents do?

23 A. Yes. My mother was a -- she was a
24 secretary all of her life. She worked the last

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1 part of her life, prior to her retirement, as a
2 secretary to a radiologist at one of the hospitals
3 in Sheboygan. She would transcribe his dictation
4 when he would read the x-rays.

5 And my father worked for many years
6 for the Lutheran church. He worked as a custodian,
7 and then he went to work at the hospital -- the
8 same hospital where my mother worked -- and he was
9 a supervisor in the kitchen that produced all the
10 food for the patients in the hospital.

11 Q. Do you have any brothers or sisters?

12 A. Yes, I have an older brother. He is four
13 years older than I. And I grew up with him, and he
14 moved away back in 1967.

15 Q. Did you smoke?

16 A. Yes, I did. I smoked -- I began -- I
17 had experimented with smoking when I was about 11
18 or 12 years old. I don't remember precisely.

19 I remember the event, but I don't
20 remember precisely how old I was.

21 Q. What was the event?

22 A. The event was with a couple of kids from
23 the neighborhood -- like a lot of people start out
24 smoking and experimenting with smoking -- a couple

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1 of kids from the neighborhood.

2 We were intrigued by the idea of
3 smoking, wanted to try it and find out what was so
4 fascinating about it, so we went off into the woods
5 with a pack of cigarettes that one of my friends
6 had taken from their house -- from his house, and
7 we sat around and smoked a pack of Salem
8 cigarettes.

9 Q. When you say, "What was so fascinating
10 about it," what caused you to believe it was
11 fascinating?

12 A. Well, I think that most people, when
13 they're growing up wear there's anybody who smokes
14 a cigarette around them, they see the package, they
15 see the cigarettes in the package, they see the
16 cigarette come out of the package, being put in
17 someone's mouth and lighting them on fire. And
18 then you watch the smoke.

19 I remembered this with my father, who
20 was a smoker, and used to be fascinated by watching
21 him smoke. And just, you know, natural curiosity
22 of what smoking is actually like.

23 Q. Do you recall smoking again after that?

24 A. Yes. I didn't smoke at all after that.

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1 There were some rather unpleasant side effects for
2 everybody, I think, not just the standard coughing
3 of really not being able to know quite how to smoke
4 a cigarette -- and watering eyes, etcetera -- but a
5 couple of people in the group turned as green as
6 the green on the Salem cigarette package and had to
7 excuse themselves rather suddenly. So I kind of
8 took that as a sign that maybe I wasn't quite ready
9 to smoke yet.

10 Q. How many of you were involved in that, as
11 best you recall?

12 A. Four, four people. All guys.

13 Q. And were you one -- did you get sick?

14 A. Felt a little queasy, but I wasn't sure
15 if that was an effect on me personally or it was
16 because two of the other guys got sick.

17 Q. Did you actually see them get sick?

18 A. What's that?

19 Q. Did you actually see them get sick?

20 A. Pretty much so, yeah. I mean they went
21 from kind of a shade of green, as I say, to
22 blanching white and running away, presumably to
23 deal with the malady.

24 So I didn't see actually what

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1 transpired after that. And, frankly, I didn't have
2 much interest in that.

3 Q. You guys smoked the whole pack?

4 A. I believe we did, yeah.

5 Q. When is about the next time you tried
6 smoking as best you remember?

7 A. Yes. It was after I graduated from high
8 school.

9 I was getting ready to go off to
10 college, and as were my peers from high school.
11 Almost all of my best friends were all going off to

12 college.
13 And we were, as many guys are in that
14 situation, a little bit anxious about whether or
15 not we would fit in, and so we thought that one of
16 the things we could do to not appear to be quite so
17 young would be to -- if we smoked cigarettes. So
18 we started smoking in the summer.
19 Never really enjoyed it very much,
20 but it seemed like this was the thing to do if we
21 were going to appear to be the older, more
22 sophisticated guys on campus.
23 Q. Were you smoking cigarettes?
24 A. Yes.
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1 Q. Do you recall how long you smoked?
2 A. I smoked through my freshman year of
3 college and my sophomore year of college.
4 And then my junior year, another guy
5 on the forensics team, he bet me five dollars that
6 I couldn't quit smoking for nine months, for the
7 entire school year. So I thought, okay. So I took
8 him up on the bet and didn't smoke for nine months.
9 And then after I collected on the
10 bet, I lit up a cigarette and put it out and didn't
11 smoke again until I went off to graduate school.
12 And then I smoked a little bit my first year of
13 graduate school, and then I quit and haven't gone
14 back to cigarettes.
15 Q. I'm sorry. You smoke when during
16 graduate school?
17 A. During my first year of graduate school.
18 Q. Is that your master's program?
19 A. I was working on my master's degree at
20 the time, yes, that's correct.
21 Q. You smoked for about a year then?
22 A. Little bit less than a year, actually.
23 Q. And you smoked for about how long in
24 undergraduate school?
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1 A. About two and a half out of the four
2 years.
3 Q. And what -- do you remember what brand
4 you smoked?
5 A. Different brands at various times.
6 When I went off to college, in the
7 summer before, I believe I was smoking Winston.
8 And then the summer after, for a while I smoked
9 Philip Morris regulars. And then as soon as the
10 university went back -- I went back to school and
11 went back to Winston.
12 Q. And in graduate school, do you remember
13 what you smoked?
14 A. Yeah. I was smoking Marlboro green.
15 Q. That was for about a year, or nine
16 months, or what -- correct me.
17 A. Yeah, six to nine months, something like
18 that. Before the summer after my first year of
19 graduate school, I had stopped smoking.
20 Q. When you were smoking, what was the high
21 water mark as far as how much you were smoking a
22 day?

23 A. Probably never more than eight to ten
24 cigarettes a day, and mostly in social settings.
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1 Q. Did you did you consider yourself
2 addicted?
3 A. When I smoked, for me, it was part of my
4 regular daily experience. But I never thought
5 about whether or not I was really addicted to them.
6 And since I -- you know, I quit for
7 the nine-month period, took it back up, and then
8 quite again and never went back to them. I never
9 had any trouble when I wasn't smoking, so I was
10 probably not addicted. Although, again, I never
11 thought about whether I was addicted or not.
12 Q. Did your parents smoke?
13 You mentioned seeing your dad. Were
14 you being literal that you saw your dad smoke?
15 A. Oh, yes. My dad was a smoker.
16 Q. Your mom?
17 A. Mother never smoked.
18 Q. Your dad smoked for about how many years,
19 would you say?
20 A. I'm not precisely sure when he started.
21 I think -- I think it was -- well, I
22 don't know. I don't know when he started.
23 My memories of my father, as far back
24 as they go when I was, you know, maybe five or six
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1 years old, I always remember that he was a smoker.
2 Q. Is your father living?
3 A. No, he died in 1963.
4 Q. The reason?
5 A. He died of a heart attack. Never been
6 sick a day in his life.
7 And to make it worse, as I said, he
8 worked at the hospital. And he was walking down
9 the hall on his way into the kitchen, and there was
10 a medical doctor right behind him. And he just
11 keeled over and had a massive heart attack, and the
12 doctor couldn't even save him on the spot.
13 Q. About how old was he?
14 A. He was 50 years old.
15 Q. Do you have heart disease in your family
16 other than your dad?
17 A. Yes, my mother.
18 Q. Is your mother alive?
19 A. No. She died when she was 64 years old
20 also of a heart attack.
21 Q. How much did your dad smoke a day, about,
22 as far as you can tell?
23 A. Probably about a pack a day.
24 Q. He was smoking still when he died?
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1 A. Yes, he was.
2 Q. Have you had work -- since you graduated
3 with your doctorate, in addition to the university
4 work that you've indicated and the professional
5 consulting that you've indicated, would that cover
6 your employment, or have you had any other
7 part-time jobs of any kind since you obtained your

8 doctor's degree?
9 A. I think they are all -- all of the
10 consulting -- it's a pretty exhaustive list, as I
11 recall.
12 Q. I'm with you. But in addition to
13 consulting or teaching, have you had any other
14 jobs?
15 A. No, I have not.
16 Q. I notice you've been a visiting professor
17 or lecturer. I'm assuming you get paid for those
18 jobs as well?
19 A. No, actually, I don't think I was paid
20 for any of them, to be honest with you.
21 Q. You get paid -- your pay continues at
22 your primary site, such as the University of
23 Wisconsin, and do you have an exchange of
24 professors or what?

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1 A. That's a fairly common practice, but not
2 one in which I participated.
3 My visiting roles as a visiting
4 professor were, I would spend several days at these
5 various universities, and I would present lectures
6 to classes of undergraduates, graduate students,
7 and to faculty at those universities where I would
8 talk about the kind of research that I was doing
9 and exchange information about the research that
10 they were doing.
11 It was kind of an opportunity for me
12 to, you know, spend some quality time face-to-face
13 with people with whom I shared a lot of research
14 interests.
15 Q. Who would pay your travel expenses?
16 A. In some cases, I paid it out of my
17 pocket, and in some cases the institution paid for
18 my expenses.
19 Sometimes it was in connection
20 with -- I would extend a stay where I was at one
21 particular site for a conference, and I would stay
22 over a few extra days, do lectures at the
23 university that was in the area, and then return
24 home.

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1 Q. I notice in your report you list
2 references that -- your citations regarding your
3 report; is that correct?
4 A. That is correct.
5 Q. I think it's captioned list of
6 illustrative references?
7 A. That's it.
8 MR. SMITH: I'm asking you folks whether
9 or not you'll provide me with a copy of those?
10 MR. PROCTOR: Russ, you're asking for a
11 copy of all the citations from his list of
12 illustrative references?
13 MR. SMITH: Yes, sir.
14 MR. PROCTOR: Well, we can talk about
15 that now, or we can talk about it after the
16 phone call.
17 I mean I'm happy to provide you with
18 materials that you're unable to have access

19 to. I think it goes back to our original
20 issue as to whether each side is going to
21 provide publicly available materials to the
22 other that they can otherwise obtain.
23 MR. SMITH: We're willing to do that. I
24 think it's -- I think it's a lot easier. They
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1 may be publicly attainable, but that's a
2 question of definition in my judgment.
3 MR. PROCTOR: I'm not necessarily adverse
4 to that, Russ.
5 You want to talk about it after the
6 call because I think, so as not to waste your
7 time, we can address it in a broader context
8 of other witnesses as well.
9 MR. SMITH: Sure. I'd just like leave on
10 the record here of our request of this witness
11 to be provided those.
12 MR. PROCTOR: Okay.
13 MR. SMITH: Another one I would ask is
14 I'd like to have copies of the journal
15 articles, publications, chapters, and books
16 that he's written. So maybe you guys can get
17 back to me on that also, okay?
18 MR. PROCTOR: I will do so.

19 BY MR. SMITH:

20 Q. All right. Turning to your report,
21 Dr. Meyer --

22 A. Yes.

23 Q. -- I guess my first question would be,
24 are all the opinions that you intend to state at
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1 trial included in your report?
2 A. I guess what's in the report plus
3 whatever else I would be asked by my attorneys or
4 by your side.
5 Q. But you're indicating to me, at this
6 point in time, all the opinions that you're aware
7 of that you're going to be expressing are stated in
8 your report?
9 A. Yes. At this point in time, yes.
10 Q. And my other question for you would be,
11 Are all the bases, reasons, facts, and information
12 that support those reports -- those opinions,
13 rather -- stated in your report?
14 A. Yes, the opinions and the facts and
15 examples of the bases for those opinions are
16 contained in my report, that is correct.
17 Q. Are the bases and the reasons for your
18 opinions stated in your report then?
19 A. Yeah, the bases -- some of them are
20 there.

21 Obviously, as I say, it's a list of
22 illustrative references, which means that there are
23 areas which I talk about in the report where the
24 references I give are, in some cases, two of many
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1 such references that could have been included.
2 Q. I guess what I'm asking you is if there
3 are any bases for your opinions that aren't stated

4 in your report, I'd like you to tell us what they
5 are.

6 MR. PROCTOR: I'll object to that on the
7 grounds of vagueness.

8 And, Russ, just for the record since
9 Professor Meyer may not know the legal context
10 of some of those terms, as his attorney, I'm
11 stating that we have complied with the Rule
12 20-6 (sic) with the regard to the meaning of
13 those terms.

14 He can answer based upon his own
15 personal knowledge of what those terms may
16 mean.

17 THE WITNESS: Okay, my answer is, is that
18 I have indicated the different areas of my
19 expected testimony, and I've also indicated
20 what is at the base for or in support of the
21 opinions that I might be asked to express.

22 BY MR. SMITH:

23 Q. I want to make sure I'm clear with you on
24 one thing, Dr. Meyer.

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1 I'm not concerned about what you
2 might be asked, at this moment. I'm concerned
3 with -- I had asked you previously if all the
4 opinions that you are aware of that you were going
5 to be expressing are contained in your report, and
6 you indicated to me they were.

7 A. As of this point in time, yes.

8 Q. And then we went from there -- it's my
9 understanding that first it was -- well, it's my
10 understanding that right now we're dealing with the
11 question of bases, reasons, facts, or information
12 upon which they're based.

13 The word "bases" means what to you,
14 or "basis;" what does that mean to you, sir?

15 A. What information sources -- the kind of
16 information sources that I'm relying on.

17 Q. For your opinions?

18 A. That's correct.

19 Q. And that's -- I'm asking you the question
20 whether or not there are any opinions in here that
21 do not have all the bases stated, and that's what
22 I'm trying to find out right now.

23 A. Yes, there is a basis for all of the
24 opinions that is contained in my report as it

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1 stands now.

2 Q. And what I'm asking is, is there any
3 other basis for these opinions that is not stated
4 there? And I mean specific basis when I say that.

5 A. Yes, but for --

6 Q. I just don't want to hear a new basis at
7 trial that I don't hear now, is what I'm asking.

8 A. Well, maybe if I give you this example,
9 that might help clarify.

10 In the area of the influence of peers
11 on the decision to start smoking --

12 Q. What page are you looking at, please?

13 A. This would be starting halfway down page
14 3 and carrying over to page 4.

15 Q. Where is the -- what you're talking
16 about? Where is the opinion you're referring to?
17 A. It begins with the paragraph that says,
18 "I also expect to testify regarding the key factors
19 that dominate consumer decisions about smoking."
20 Q. What's your opinion there? Where is your
21 opinion, please?
22 A. Yes. "Specifically, research indicates
23 that it is these non-marketer-controlled factors
24 such as peer and family influence that have the
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1 most powerful and crucial impact on an individual's
2 decision to start smoking and to continue to
3 smoke."

4 Q. And then --
5 A. I go on to cite sources.
6 Q. Are those your bases for that opinion?
7 A. They are representative, yes.
8 Q. What other bases would there be?
9 A. Well, there are literally hundreds and
10 hundreds of studies that have been done over time
11 that get at, at least in part, the influence of
12 peers or influence of parents, older siblings, or
13 individual factors that contribute to the decision
14 to start smoking and to continue to smoke.

15 So what I provided in my expert
16 report in this area, as in other areas, would be
17 the kinds of references and the kinds of studies
18 that are used in support which form the basis for
19 my opinion.

20 Q. I want to say this so that I'm clear.
21 I'm going to be objecting to any bases being added
22 that aren't contained in this report.

23 And, in addition to having said that,
24 I'm going to respectfully ask you to tell me any of
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1 these additional bases at this time.

2 MR. PROCTOR: Mr. Smith, just for the
3 record, I would also like to point out on page
4 9 of his report there is a qualifying
5 statement about testimony concerning opinions
6 expressed by other witnesses, which would
7 include witnesses of the plaintiff's like
8 Dr. Blum (phonetic), who have not yet been
9 deposed and will be deposed after Professor
10 Meyer. So he has reserved the right --

11 MR. SMITH: I'm going to object to the
12 interjection.

13 MR. PROCTOR: -- as well as evidence that
14 any such witnesses may rely upon.

15 MR. SMITH: I read it, but I'm going to
16 object to its interjection at this point.

17 BY MR. SMITH:

18 Q. But are there any other bases that you,
19 at this time, anticipate stating with respect to
20 the opinion that we're currently looking at, other
21 than those stated in your report that, I believe,
22 would be on -- you're talking about pages 3 and 4?

23 A. Yeah. For example, in that section,
24 that's right.

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1 Q. Are there any others that you intend on
2 stating, sir?

3 A. The opinion itself, no.

4 Q. Are there any additional bases for that
5 opinion, bases that you plan on stating?

6 A. Yes. Again, there are a lot, a lot, of
7 additional studies which essentially say the same
8 thing as is said here.

9 Q. And, again, as I indicated earlier, I'm
10 going to object to your adding them. But I'd like
11 to know what they are now.

12 If you're going to be adding them,
13 I'd like to hear them at this time, please.

14 A. Well, I don't have with me, you know,
15 like an exhaustive list of additional references.

16 Q. Are there any others that come to your
17 mind at this time specifically?

18 A. Yes. In the area, for example, of peer
19 influence --

20 Q. That's the area we're in right now,
21 right?

22 A. That's correct.

23 Q. And that's the statement that you make in
24 the third sentence of the first full paragraph on
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1 page 3?

2 A. Yes, and then continuing on in support of
3 it on page 4.

4 Q. Yes. Any other basis that you intend on
5 adding?

6 A. There would be other research. There are
7 studies that are -- that have been done by a number
8 of researchers whose research is represented here
9 in terms of the conclusions and the evidence that I
10 presented.

11 This would include Professor Baumann,
12 B-a-u-m-a-n-n; and Professor Ennett, E-n-n-e-t-t;
13 research done by Professor Lisa Henriksen,
14 H-e-n-r-i-k-s-e-n; and Professor Jackson,
15 J-a-c-k-s-o-n; also research done by Professor
16 Chassin, C-h-a-s-s-i-n; Professor Flay, F-l-a-y, is
17 the last name.

18 And those would be the names that
19 come to mind immediately. And they have all done a
20 series of studies over a period of years that have
21 examined the factors that contribute to or cause
22 someone to start smoking or to continue to smoke.

23 Q. Do you have any others that you intend on
24 adding?

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1 A. Again, those are the only ones that come
2 to mind at this point.

3 Q. Can you tell me, Dr. Meyer, I think the
4 first was Professor Baumann, what you're referring
5 to specifically that he did, that he wrote?

6 A. Yes, Professor Baumann and several of his
7 colleagues have looked at a number of different
8 ways in which peer influence has an effect on the
9 decision to start smoking and to continue to smoke.

10 For example, they did a study back, I

11 believe, in 1994 or 1995 in which they identified
12 what we now know as the aspirational peer group.
13 And this means that if I go to school
14 and there is a group that I'm not a member of that
15 I'd like to become a member of, and one of the
16 things they do in that group is to smoke or not to
17 smoke, as the case may be, then I will shape my
18 behavior accordingly in an attempt to make myself
19 more like the group that I aspire to become a
20 member of.
21 And they've studied that particular
22 type of influence as it operates.
23 Q. And the name of that -- are you referring
24 to a publication?

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1 A. Yes, this would have been a journal
2 article.
3 Q. And the name of it?
4 A. I don't have it. I don't have it in
5 mind.
6 Q. And where it appeared?
7 A. I can't recall that either.
8 Q. The next one I believe you mentioned was
9 Professor Ennett?
10 A. Yes, that's a colleague of Professor
11 Baumann and is published with Professor Baumann.
12 Q. You're talking about they did the same
13 thing together?
14 A. Yes, some of the same things together.
15 Baumann has done some things on his own. Ennett, I
16 believe, has done some things with other colleagues
17 as well.
18 Q. Do you have a publication in mind,
19 Dr. Meyer, of which you're relying from Professor
20 Ennett for this opinion?
21 A. No, I do not.
22 Q. Then I believe the next one was Professor
23 Lisa Henriksen?
24 A. Yes. Professor Henriksen and Professor

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1 Jackson have written several articles mostly
2 dealing with the role of parental influence on the
3 decision of their children to smoke or continue to
4 smoke.
5 Q. And do you have a recollection of any of
6 the articles that they have written on the topic
7 upon which you're relying?
8 A. Yes. One, in particular, was published.
9 I believe the journal is -- this one I remember --
10 is Health Communication.
11 And, in this particular article, they
12 talk about the importance of parents expressing
13 their feelings about smoking to their children; and
14 then not just expressing their feelings, but also
15 whether or not they have rules, whether or not
16 those rules are enforced, and what kind of rules
17 they are; and the degree to which that has a very
18 powerful influence on whether or not their children
19 will start smoking or continue to smoke; and how
20 this holds true even in households where parents
21 themselves would smoke.

22 Q. And the name of the article?
23 A. I think it has the word -- something
24 about parenting styles and initiation of smoking by
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1 teenagers. I'm not sure of the precise title, but
2 that's what it gets into.

3 Q. And the issue?

4 A. That -- I don't know that. The year was
5 either 1998 or 1999 as I recall.

6 Q. And any other articles from the two of
7 them that you're relying on?

8 A. There have been several other articles --
9 and, again, I can't place them in terms of journal
10 or journal titles -- but they do deal, again, with
11 the roll of parents in influencing the decision to
12 start smoking and continue smoking.

13 Q. I believe the next one was Professor
14 Chassin; is that correct?

15 A. Yes. Yes. What she's done in her
16 research is to study teenagers, actually, from
17 their preteen years on, and is focused particularly
18 on the role of mothers and teenage girls and the
19 bond that forms or doesn't form between a teenage
20 girl and her mother; and whether or not the mother
21 smokes; and, again, even if the mother doesn't
22 smoke, the attitude toward smoking and the degree
23 to which this can influence a young girl's decision
24 to smoke and continue to smoke.

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1 MR. PROCTOR: Mr. Smith, if I would
2 interject real quickly, on page 10 of the
3 witness's report it states List of
4 Illustrative References.

5 We can give you a list that contains
6 other references upon which he may rely that
7 stand for the same proposition, and I'd be
8 happy to fax that to you today.

9 And you can take whatever position
10 you deem appropriate as to whether or not he
11 ultimately can rely upon anything on that
12 list, but that would provide you the extent of
13 the references that he may use that stand for
14 the same proposition. You'd have that in your
15 hands.

16 MR. SMITH: Does that document currently
17 exist?

18 MR. PROCTOR: I think one has been
19 created for another case, and so the answer
20 is, yeah, it exists. And we can send that to
21 you today.

22 So what it is, it's the same --

23 MR. SMITH: Does he have that document?

24 THE WITNESS: I don't have that document
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1 with me, no. I do not have it with me, no.

2 MR. SMITH: I'm taking it, Craig, that
3 you have it?

4 MR. PROCTOR: I don't have it, but I can
5 have one sent to you.

6 MR. SMITH: Well, I'm going to object to

7 receiving it at this late date. I'm going to
8 ask for it.
9 MR. PROCTOR: I understand. What I'm
10 trying to do --
11 MR. SMITH: But I object, and I'm not --
12 I don't think that cures the situation. But I
13 will request it.
14 MR. PROCTOR: I understand. We'll just
15 reserve whatever positions we have on that.
16 What I'm suggesting, though, if you
17 have that list, then you won't have to waste
18 time going through asking him from memory for
19 additional sources that reach the same
20 conclusion and are merely supportive of or
21 redundant of the List of Illustrative
22 References that he's already provided you on
23 the date they were due.
24 And that way we can fax that to you
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1 today. You'll have that, and we can save
2 time --
3 MR. PROCTOR: I'm sorry. Someone is
4 talking.
5 But, in any event, we could fax that
6 list to you today, Mr. Smith, and you can take
7 whatever position you deem necessary. But
8 that will save us time.
9 MR. SMITH: Who was that on the phone?
10 Who was the person?
11 MR. PROCTOR: I think that was Mike
12 Suffern, but I'm not sure.
13 MR. SUFFERN: I'm sorry. I thought I had
14 my mute button on. I was talking to my
15 secretary. I apologize.
16 MR. PROCTOR: Does that sound agreeable?
17 We'll fax you that list today, and
18 you won't have to waste time, and you can take
19 whatever position you want --
20 MR. SMITH: I don't know that it is a
21 total waste if time, frankly. I am going to
22 request the list.
23 BY MR. SMITH:
24 Q. Professor Chassin, have you told me what
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1 area she wrote in?
2 A. Yes. That was where I was making
3 reference to some of her research on specifically
4 looking at mothers and daughters and --
5 Q. Do you have a list of these names with
6 you right now?
7 A. No, I do not.
8 Q. You don't recall the publication her
9 article appeared in?
10 A. I do not.
11 Q. Professor Flay?
12 A. Professor Flay has also been part of a
13 research team with Professor Chassin, and -- but
14 he's also done some things on his own and working
15 with others as well.
16 And what he has tapped into is the
17 significance of peers and peer influence and how

18 peer pressure is different from just simply being
19 aware of the fact that there are other people at
20 school who smoke; for example, whether or not
21 they're a part of a group, or it's a best friend,
22 or if your best friend is actually encouraging you
23 to join him or her in smoking cigarettes. So he's
24 focused in on a lot of that.

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1 Q. And do you recall the name of his
2 article?
3 A. I don't recall that.
4 Q. Do you recall the name of the publication
5 in which it appears?
6 A. No, I do not.
7 Q. Are there any other reasons for the
8 opinion that we're talking about that do not appear
9 in your report or you haven't told me of today?
10 A. I'm just looking through the report.
11 MR. PROCTOR: You say reasons that are
12 not in the report?
13 MR. SMITH: Yes, sir.
14 THE WITNESS: Reasons are probably all
15 covered in the report.
16 BY MR. SMITH:
17 Q. And on what pages would they be covered?
18 A. Just in terms of the different areas of
19 my testimony?
20 Q. No. This opinion that we're looking at
21 right now, Dr. Meyer, the opinion we're looking at
22 right now.
23 A. Okay.
24 Q. Which is, as I understand it, is the

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1 opinion expressed in the third sentence of the
2 first full paragraph on page 3?
3 A. Right.
4 Q. Is there any other reasons -- withdraw
5 that.
6 If you could tell me, when you say
7 the reasons are all there, we're looking at what
8 pages upon which you're basing that statement?
9 A. Well, then I move on to talk about other
10 areas in which I would express an opinion.
11 Q. I understand. But I'm not -- before we
12 go on to other opinions, I want to cover this one.
13 A. Okay.
14 Q. Have you covered all the reasons for this
15 opinion? Have you told me all the reasons?
16 A. Well, again, with the qualifier that what
17 I've indicated here is -- in the report itself --
18 are examples of the kinds of research that form the
19 basis of my opinion. Then there are other studies
20 that are not included in the report.
21 Q. That you just told me about, correct?
22 A. That's right. And then there are other
23 studies that would also be a part of the list that
24 you will be provided with.

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1 Q. So what you're telling me, I believe, is
2 that in your report -- and I guess I better be sure

3 of this.
4 The studies that you're referring to
5 that are contained in your current report are on
6 what pages of the report, insofar as the opinion
7 that's currently before us?
8 A. As far as the opinion that's currently
9 before us --
10 Q. Yes, sir.
11 A. The examples of references, the first one
12 is Bertrand and Abernathy.
13 Q. Page 3?
14 A. That's right.
15 Q. Go ahead, sir.
16 A. And then the Califano and Booth, 1998.
17 Q. Page 4?
18 A. That's correct.
19 And right underneath that is the more
20 recent 2001 published report, the 2000 CASA
21 National Survey. About the middle of page 4 it's
22 referenced.
23 Q. Okay.
24 A. And then a quote from that. And then the
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1 next paragraph is a study that gets at both peers
2 and parental influence.
3 Q. That's Simons-Morton?
4 A. That's correct.
5 Q. That's supportive of the opinion we're
6 looking at; is that what you're saying?
7 A. That is correct.
8 Q. What are the others?
9 A. Then after that, it's Thomas and Larsen,
10 1993; and then ends up with the study by Smith and
11 Stutts, 1999.
12 Q. And that's the completion of the
13 paragraph going over to page 5?
14 A. That is correct.
15 Q. Now, in addition to those and the new
16 ones that you've mentioned today, you now say
17 you're also going to send me some more in the mail;
18 is that correct?
19 A. I think they will be part of the list of
20 references that Mr. Proctor referred to.
21 Q. But you believe there are some additional
22 ones contained in there?
23 A. Yes.
24 Q. Now, in addition to that, are there any
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1 other reasons to support the opinion we're
2 currently looking at?
3 A. Yes, there are.
4 Q. And what would those be?
5 A. As I say, I mean there's a whole list of
6 studies over the years, you know.
7 And I've recalled, off the top of my
8 head, some of the major researchers who have done
9 research in this area. And, again, there are many
10 others.
11 Q. Are there any others that you plan on
12 testifying regarding?
13 A. At this stage, for this -- purposes of

14 this part of my testimony, I think you would
15 have -- you would have an inclusive list.
16 But, again, I would emphasize that
17 this would depend on questions that you would ask
18 me and also research that was referred to by
19 experts who may also testify in court that would
20 overlap with my area of expertise and interest.

21 Q. Are there any other reasons that you
22 haven't expressed that support the opinion we're
23 currently looking at?

24 A. There are no other reasons, no.

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1 Q. Are there any other facts or information
2 that support it that we haven't talked about?

3 MR. PROCTOR: Object to the form.

4 THE WITNESS: You know, again, as I keep
5 saying, there is a whole body of literature
6 out there that's looked at and has
7 investigated the general topic of why people
8 start smoking and continue to smoke.

9 BY MR. SMITH:

10 Q. Are there any other facts or opinions
11 upon which you're basing your opinion that you
12 haven't told me about or that do not appear in your
13 report, from the beginning of the first full
14 paragraph on page 3, down through the end of the
15 first paragraph that ends on page 5, right after
16 the Smith and Stutts article?

17 MR. PROCTOR: Object to the form.

18 And, Russ, are you talking about
19 materials other than the litigation materials
20 in this case, depositions and things?

21 MR. SMITH: I'm talking about his report.

22 THE WITNESS: Then I'm not sure I
23 understand.

24

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1 BY MR. SMITH:

2 Q. Does your report, in the area of the
3 geographical or the particular location within the
4 report that I've just referred to running from page
5 3 to page 5, contain all the facts and information
6 upon which you base the opinion we're currently
7 looking at, which is in the third sentence of the
8 first full paragraph on page 3?

9 A. Well, if I went into any of the other
10 studies, let me tell you this: It would not change
11 or be any different than the kinds of citations and
12 references that I've made in support of the opinion
13 that we've been talking about.

14 MR. SMITH: Let me ask the court reporter
15 just for clarity, Stacy, would you mind
16 reading that last question back to the
17 witness, please.

18 (Whereupon, the record was
19 read as requested.)

20 MR. PROCTOR: I'll object to the form of
21 that as reread as well.

22 BY MR. SMITH:

23 Q. Dr. Meyer?

24 A. Yes.

1 Q. What would your answer to that question
2 be, please?

3 A. The answer to the question is what I said
4 it was, which is that, yes, there is a body of
5 research that --

6 Q. That you're relying on?

7 A. That's correct.

8 Q. And would you tell me what it is in
9 addition to what we've already covered, please,
10 specifically that you're going to be relying on.

11 I want to know what it is you're
12 relying on because I don't want to find out at
13 trial, please.

14 A. I have nothing else other -- no other
15 specific studies that come to mind at this point
16 that I would say.

17 Q. And right now we're talking about facts
18 or information.

19 Are there any other facts or
20 information that come to mind?

21 A. Nothing to comes to mind at this point.

22 MR. PROCTOR: I'll --

23 BY MR. SMITH:

24 Q. Dr. Meyer, on the issue of documents, are
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1 there any exhibits or summaries or anything of that
2 type that you have regarding this particular
3 support -- I mean this particular opinion,
4 rather -- which would be used by you as either a
5 summary or in support of it that you've prepared?

6 A. I have nothing that I've prepared, no.

7 Q. Anything that you've seen that anyone
8 else has prepared?

9 MR. PROCTOR: Mr. Smith, I'll object. A
10 couple points.

11 First of all, just so you know,
12 defendant's position that the Court's current
13 scheduling order pertaining to the listing of
14 trial exhibits trumps any other requirement to
15 list specific trial exhibits, number one. By
16 definition, it would have to, otherwise Judge
17 Dowd's order would have no meaning.

18 Second of all, it's our position that
19 demonstrative exhibits, as has been the case
20 with every case I've ever been involved in,
21 are not required to be listed along with the
22 submission of the expert reports or even on
23 the July 23rd and July 27 exchange of trial
24 exhibits. They'll be submitted on a date to

1 be determined by the Court or agreed upon by
2 the parties.

3 So, as his counsel, I'm stating that
4 he has not get given you demonstrative
5 exhibits, and we're not going to until a due
6 date is established.

7 And then lastly, I think Professor
8 Meyer, to be fair to him, has reviewed one
9 other bit of factual information that he has

10 not -- that he has inadvertently not told you
11 about, and that is some depositions in the
12 case. So I want that to be on the record, and
13 you can ask him some questions about those.

14 MR. SMITH: We object to the long
15 speaking objections.

16 BY MR. SMITH:

17 Q. But, Dr. Meyer, do you have any other
18 exhibits?

19 A. I have no other exhibits. But I would --
20 I didn't know if you were talking about or wanted
21 to specifically know if I had reviewed depositions,
22 which I obviously have, in this case.

23 Q. I'm going to object to your client
24 interjecting that in -- I mean to your attorney
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1 interjecting that in.

2 But since he has, you can answer his
3 question. Answer his question, please, as to what
4 depositions you've reviewed.

5 A. Yes. I've reviewed the two depositions
6 of David Tompkin; I've reviewed the deposition of
7 his wife Jocelyn; and I've reviewed the depositions
8 of David's four brothers, two older and two
9 younger -- Gary, Gilbert, I think, and Robert and
10 William. So it's those seven.

11 I had not brought them up because
12 they were not mentioned specifically in the expert
13 report because we were talking about a specific
14 section of the expert report.

15 Q. Are there any other opinions in your
16 report that you have not stated all the bases or
17 reasons for your opinions?

18 A. Again, it would come back to the same
19 answer or the same type of answer.

20 Q. Can you take me to an opinion that you
21 believe that comes back to, please. I just want to
22 cover them while we're here.

23 A. Yes, the opinion -- the answer that I'm
24 taking you back to is the one that says what I have
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1 done is provided the kinds of support for my
2 opinions that's out there in the literature, and
3 that there are other things that say the same
4 thing.

5 And that's true for all basic areas
6 in which I've expressed my opinion.

7 Q. I notice -- I do want to go back to one
8 thing while we're doing that. On page 5, you refer
9 to Thomas and Larsen 1993. Do you see it about the
10 sixth line down?

11 A. I do.

12 Q. I don't see a page number there?

13 A. There is not a page number because there
14 isn't a quote. There is not a direct quote.

15 Q. Is there a page number that supports your
16 position in that Thomas and Larsen article?

17 A. What you have there is a statement which
18 is the conclusion of the survey done by the Gallup
19 organization, which identified the major factors of
20 peers, parents, and older siblings as the main

21 reasons why adults said they started smoking.
22 Q. I'm going to object to that being a basis
23 because I don't see -- I don't want to have to fish
24 through the entire item to locate it.

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1 Excuse me one second more, please.

2 I see a -- you refer to Califano and
3 Booth, the 2000 CASA survey?

4 A. Yes.

5 Q. And yet in your references you use the
6 1998 survey?

7 A. There's two of them.

8 Q. I'm trying to find -- I only see one in
9 your reference though. I'm going to object to it
10 for that reason.

11 A. You will find it in the references.

12 In the first case, the authors
13 Califano and Booth, 1998, are identified. And
14 you'll find them in the List of Illustrative
15 References on page 10. You look down, you see
16 Califano, J.

17 Q. 1998 survey.

18 A. Right. And then right underneath it is
19 the appropriate reference for Columbia University's
20 more recent 2000 CASA National Survey. That's
21 referenced with the, in parentheses, 2001 in the
22 text on page 4.

23 And then if you look on the
24 references, right under Califano and Booth, you see

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1 the entry, Center on Addiction and Substance
2 Abuse -- that's CASA -- 2001 National Survey of
3 American Attitudes on Substance Abuse VI: Teens.
4 New York, Columbia University. That's where you
5 can find that reference.

6 Q. I see in the body you're referring to a
7 1998 article?

8 A. Yes.

9 Q. That's correct?

10 A. That's correct.

11 Q. And I see on page 10 you refer to the
12 1998 article. That covers the one on lines 3 and 4
13 in that paragraph on page 4?

14 A. That is correct.

15 Q. Then when we drop down about six lines,
16 the 2000 CASA National Survey is, you're
17 indicating, which one?

18 A. Is the reference right underneath, on
19 page 10, Califano and Booth, 1998.

20 Q. Okay, thank you.

21 A. You're welcome.

22 Q. 2001 is a --

23 A. Publication date.

24 Q. Okay. Published 2001 and written in

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1 2000, is that what you're telling me?

2 A. Yes. Data collected in the year 2000,
3 published as a report in 2001. That's it.

4 MR. SMITH: I guess I would say, just in
5 the interest of time, as for any of them as we

6 go through here, if we don't have some type of
7 page reference where we're able to go through,
8 and if we have to just fish through large
9 sections and having no idea where it is, I am
10 going to object to it.

11 MR. PROCTOR: Well, I don't think that's
12 the proper standard, but your objection is
13 noted.

14 BY MR. SMITH:

15 Q. Dr. Meyer, are there any other opinions
16 that you don't think you have stated your entire
17 basis or research or reasons, rather, that support
18 them contained in this report?

19 MR. PROCTOR: Object to the form.

20 THE WITNESS: Again, my opinions based
21 on, at this point in time, are stated and
22 clearly in the report.

23 BY MR. SMITH:

24 Q. Yes, sir.

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1 A. And I've provided the --

2 Q. If all the bases and reasons are there,
3 and if not, I'd like to go to the next opinion
4 which you think is in that category.

5 A. We can move on, sure.

6 Q. Which one would that be, sir?

7 A. That would be on page 5.

8 Q. And which one would that be, please?

9 A. Starts with the paragraph, "I further
10 expect to testify regarding brand advertising and
11 brand competition and the various strategic
12 influences of advertising, including cigarette
13 advertising."

14 Q. I'd like to know the particular opinion
15 I'm looking at here.

16 A. "Like many products and services,
17 cigarette brand advertising is used to
18 differentiate among brands, promote brand loyalty,
19 and encourage brand shifting among those who
20 already smoke and may have an interest in trying a
21 different brand."

22 Q. Are there -- I guess withdraw that.

23 Are there additional bases or reasons
24 for that opinion?

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1 A. Again, there would be other research
2 like --

3 Q. I'd like to know, are there any other
4 bases or reasons upon which you're relying or were
5 relying when you expressed that opinion in the
6 report that you have not stated in your report?

7 A. Yes. Again, I would cite that there is a
8 whole body of literature which is represented by
9 the sources that I have provided which form the
10 basis of my opinion.

11 Q. Let me ask this question. Was there a
12 reason why you did not state -- assuming that there
13 are additional bases and reasons upon which you
14 were relying when you expressed opinions, was there
15 a reason why you didn't state them all when you did
16 your report?

17 By all of them, I mean the ones upon
18 which you were relying for those opinions?
19 A. Well, it would be -- it would involve me
20 drawing upon, you know, more than 30 years of
21 experience and research and all of the materials
22 that I have read and reviewed over those years;
23 plus, as I say, this really vast body of literature
24 which has accumulated over the last 50 or more
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1 years.
2 It would seem to be just an enormous
3 undertaking, which I don't think is necessary,
4 which is why I've included representative
5 references or illustrative references which provide
6 clear support for the bases for my opinions that
7 I've expressed in this report.

8 Q. Let's go back a minute on that. The
9 opinion that you expressed on page 4 that we talked
10 about earlier -- on page 3, rather --

11 A. Yes.

12 Q. Did you do any independent private
13 scientific studies yourself, research on that
14 topic, or are you relying just upon what you read?

15 A. I'm not sure what you mean by personal
16 research.

17 Q. Did you set up any type of psychological
18 studies or anything of that nature that you
19 conducted?

20 A. Not in the area of peer and family
21 influence.

22 Q. And when you indicate that -- for this
23 opinion that we're looking at on page 5 -- that
24 you've done -- you've read articles and read the

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1 literature on this for, you say, 30 years?

2 A. Yeah, more than 30 years.

3 Q. With respect to the opinion that's back
4 on page 3, did you find any of these articles that
5 came down differently than the ones that you've
6 told us of so far here today, in other words, whose
7 findings weren't in conformity with your opinions?

8 A. The research that is looked at using the
9 acceptable research methodologies in the social
10 sciences for the study of consumer behavior, no.

11 Q. Were there any studies that came down
12 differently than you did, that they did not support
13 your opinion on this topic?

14 MR. PROCTOR: Object to the form.

15 THE WITNESS: I think that all of the
16 studies that I'm familiar with that have been
17 done in -- by people in the field of
18 advertising and marketing that have looked at
19 the influence on teenagers or people who are
20 starting the process of smoking and continuing
21 to smoke, that research that has been done --
22 by people with expertise in marketing and
23 communications and advertizing -- has all come
24 down exactly as my opinion as stated.

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1 BY MR. SMITH:

2 Q. How about if we withdraw the fact of who
3 did the research, whether it was advertising or
4 marketing, just forgetting what group they came
5 from, did you read any literature that would be
6 different or would conclude differently than your
7 opinion?

8 A. Well, all of the research that I've read
9 that looks at and tries to measure the influence of
10 peers or parents or older siblings -- those factors
11 that I have identified -- all of those studies find
12 that peers, parents, or older siblings are factors
13 that indeed contribute to or cause someone to start
14 smoking or to continue to smoke.

15 In addition, research is looked at
16 individual, individual factors. Rebelliousness,
17 for example. An individual who chooses to rebel
18 against authority or against parents or against
19 school authority may start smoking because it's
20 forbidden or it's not allowed.

21 And, again, all of the research that
22 I have read on this shows that this can be a very
23 important variable in causing someone to start
24 smoking.

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1 Q. So I take it from that, then, that
2 everything that you read on this topic over the
3 past more than 30 years did not cause -- or did not
4 state that peer and family influence or
5 nonmarketer-controlled factors were the most
6 powerful and crucial factors?

7 MR. PROCTOR: Object to the form.

8 THE WITNESS: There are some studies that
9 claim that there are other factors or will
10 make the claim that advertising is a
11 significant factor in causing young people to
12 start smoking, but the data do not demonstrate
13 that.

14 BY MR. SMITH:

15 Q. So putting the data aside for a minute,
16 it is true then that you have read articles over
17 time that indicated that advertising was the most
18 important factor?

19 A. Not necessarily the most important
20 factor, but claiming that it was an important
21 factor. Yes, I have run across studies that have
22 purported to show that, yes.

23 Q. Now, when we go to the opinion that's on
24 page 5 --

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1 A. Yes.

2 Q. -- are there any bases for that opinion
3 that are not expressed in your report that you
4 relied upon in expressing this opinion?

5 MR. PROCTOR: Russ, you may have cut out
6 for a second. I didn't hear precisely which
7 opinion to which you were referring.

8 MR. SMITH: It's the one on page 5, and
9 it's my understanding it's in the first full
10 paragraph, second sentence.

11 MR. PROCTOR: Starting with like many
12 products and services?

13 MR. SMITH: Yes, sir.
14 MR. PROCTOR: Thank you.
15 THE WITNESS: Yes. And my answer again
16 is I have cited representative or illustrative
17 references, and there are other publications
18 by other authors that say the same thing.
19 BY MR. SMITH:
20 Q. And if there are any of them that you
21 plan on citing at trial or having -- indicating
22 you've relied upon, I'd like to hear you now tell
23 me them, please.
24 I'm going to object to them at this
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1 point in time, but I would like to hear them.
2 A. That would depend on if other sources in
3 this particular area might be referred to by other
4 experts. And I could not anticipate what they
5 would be specifically.
6 Q. So there are none that come to your mind
7 at this moment?
8 MR. PROCTOR: Do you mean other -- Russ,
9 this is Craig -- other than what's cited in
10 this paper and what is going to be provided to
11 you on the additional sheet?
12 MR. SMITH: Other than what is cited in
13 this paper is what I'm asking about.
14 THE WITNESS: Well, there would be some
15 additional things in the references that
16 they're going to provide you with.
17 BY MR. SMITH:
18 Q. I want to know what you're aware of as we
19 speak right now.
20 A. Okay. Just about any of your basic
21 advertising textbooks.
22 And what I've listed is Wells,
23 Burnett and Moriarity, which is one of the leading
24 advertising textbooks in the field, where they talk
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1 about advertising's role in helping various
2 competing brands compete against one another and
3 how advertising is used to promote brand loyalty
4 and to encourage brand shifting. Any of the basic
5 advertising texts would get across that.
6 The other big leading seller is
7 O'Guinne, Allen and Semenik.
8 Q. Are there any articles or textbooks that
9 would say that there were other values in brand
10 advertising as opposed to promoting brand loyalty
11 and brand shifting that you've read?
12 A. All of the advertising texts that I'm
13 familiar with talk about the significance of
14 advertising and the role that it plays in
15 differentiating among brands, promoting brand
16 loyalty, and encouraging brand shifting.
17 Q. Have you read anything that indicates
18 that advertising of products is also used to obtain
19 first-time users of that category of products?
20 A. Yes. This would be in a separate
21 category from cigarettes or other products like
22 cigarettes which have been in the marketplace and
23 are generally familiar to most consumers.

24 Q. Can you give me examples?
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1 A. Sure. When the video cassette recorder,
2 the VCR, was a new piece of technology and entered
3 into the marketplace -- and that was something that
4 I had done research on which is cited in my
5 curriculum vitae -- advertising for VCRs played a
6 role of helping to acquaint consumers with a brand
7 new product, something that most consumers were not
8 familiar with.

9 So advertising then plays the rolling
10 of saying, Here is something new, you might want to
11 try it, and this is what it is and this is what it
12 does.

13 And that's quite different from
14 established categories of products and services
15 where consumers already know what the product is,
16 how it's used, who it's used by, and in what
17 different situations. For example, laundry
18 detergent or breakfast cereal, soft drinks.

19 Q. Your experiencing with reading articles
20 of this type, does it also go back over 30 years?

21 A. Yes, it does.

22 Q. And in that entire period of time, have
23 you ever read any articles that have had, as one of
24 their purposes, the obtaining of people to use that
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1 particular seller's product even though they have
2 never used a product of that type or category
3 before in their lives?

4 MR. PROCTOR: Object to the form.

5 THE WITNESS: Again, the general text on
6 advertizing will talk about different types of
7 consumers and they talk about different types
8 of consumers in relation to different types of
9 products. And they usually refer to a product
10 or service as being in part of what they call
11 the product life cycle, and this is from when
12 a product category is brand new being
13 introduced to people for the first time; and
14 then once it becomes better known by more
15 people, it kind of finds its way into the
16 marketplace if it's going to be successful.

17 And then it usually is characterized
18 by a number of different companies competing
19 against one another. They have their
20 respective brands with their, what they
21 consider to be attributes or characteristics
22 of their brand which makes it better than the
23 competition. And that's what they usually
24 focus in on their advertising.

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1 And then once the market become
2 saturated with original purchases, then it
3 comes time for replacement purchases.

4 So, for example, in the automobile
5 category, there's new automobile ads out every
6 year because there are new models of cars out
7 every year. So advertising operates
8 differently with those people in a particular

9 year who might be in a market to buy a new
10 car.
11 Once I bought a new car, it will be a
12 while before I buy another one, so the next
13 year's model advertising basically is not
14 relevant to me anymore. And so it goes.
15 So it varies from consumer to
16 consumer, but specifically in relationship to
17 where the product is in its development in the
18 product life cycle.

19 BY MR. SMITH:

20 Q. Have you ever read any articles that
21 indicate that one of the purposes of advertising is
22 for the advertiser to attempt to get first-time
23 users of the product in question?

24 A. There are some articles and books that
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1 refer to first-time entrance into any product
2 category, sure.

3 Q. And is that one of the uses of
4 advertising, that particular group?

5 A. It can be, depending on what the
6 advertiser is interested in doing and where the
7 advertiser is getting most of the business from
8 existing customers.

9 Q. Why did you tack on the last part of that
10 answer? What's the relevance of that?

11 A. Well, again, in the advertising
12 literature and in the advertising textbooks and in
13 advertising education, one of the things that
14 people discover, and especially people that go into
15 the advertising business, you discover that you
16 have a budget which has limitations; in other
17 words, you have a certain amount of money to spend
18 on your advertising.

19 And what you want is you want the
20 maximum return for every advertising dollar that
21 you spend, which means that you're going to spend
22 the majority of your money, if not all of your
23 money, where you're getting most of your business
24 from; in other words, your existing customer base,

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1 and especially true in a product category that is
2 one that we would call sometimes a mature product
3 category. Laundry detergents, soft drinks,
4 cigarettes are in that category.

5 So if you have a product category
6 which is in a mature stage, you have, usually,
7 intense brand competition. And that means if
8 you're an advertiser and you've got one of those
9 brands in a category like that, you have to be very
10 much concerned with getting the best rate of return
11 on your advertising dollars.

12 That means spending your money where
13 you can communicate with your existing customers to
14 preserve their loyalty to buying your brand, and
15 also anybody who is in the marketplace who might be
16 interested in trying another brand, for whatever
17 reason, that you can get some of the business away
18 from your competitors.

19 Q. I'm not sure I understand where you're

20 going with this. What I'm asking is, is have you
21 ever read anything that indicated that one of the
22 purposes of advertising was to attract first-time
23 users of a product?
24 MR. PROCTOR: Object to the form. Asked
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1 and answered twice.
2 BY MR. SMITH:
3 Q. Just yes or no. Have you ever read
4 anything that indicated that? Or if you can't
5 answer that yes or no, tell me.
6 A. Yes, I have read and seen references to
7 that particular phenomenon that you just described.
8 Q. And have you read people who have written
9 and indicated that was one of the purposes of
10 advertising, in their opinion?
11 A. I have read that, yes.
12 Q. Do you agree or disagree with that as
13 being one of the purposes of advertising? And can
14 you answer that yes or no?
15 A. I cannot answer that yes or no.
16 Q. Do you have an opinion as to whether or
17 not one of the purposes of advertising is to
18 attract first-time users of a particular product
19 category? Just, do you have an opinion?
20 A. I do have an opinion.
21 Q. And is that opinion -- do you have an
22 opinion yes or an opinion no that that is one of
23 the uses?
24 MR. PROCTOR: Object to the form.
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1 THE WITNESS: Again, for a product
2 category that is new, that is one of the
3 purposes of advertising.
4 BY MR. SMITH:
5 Q. Now, for a product category that is old,
6 is that one of the purposes of advertising?
7 MR. PROCTOR: Object to the form.
8 THE WITNESS: I'm not even sure how you
9 would determine that.
10 BY MR. SMITH:
11 Q. You have no opinion on that, then?
12 A. My opinion is that that --
13 Q. First, do you have an opinion?
14 A. Yes, I do.
15 Q. Okay, now we're talking about products
16 that have been on the market for an extended period
17 of time. And you just indicated to me that you do
18 have an opinion as to whether or not one of the
19 purposes of advertising would be to attract new
20 users of that particular product category for that
21 particular seller's product; is that correct?
22 A. I have an opinion on it, and my opinion
23 is, is that that is not the purpose of the
24 advertising dollars as advertisers spend it.
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1 Q. You're saying to me then that it is not
2 one of the purposes of advertising, in your
3 opinion?
4 MR. PROCTOR: If I could -- if I could

5 object. If you could please let the witness
6 finish his response for asking the next
7 question.
8 BY MR. SMITH:
9 Q. I'm willing to do that. But, Dr. Meyer,
10 I want to say this to you.
11 I have four hours here, and I'd like
12 you to try to focus on the questions. And if we
13 can't get it done in four hours, I'm going to ask
14 the Court for more time if it's caused by your not
15 answering questions that I think are fairly
16 straightforward.
17 And the question is very simple.
18 You've indicated you do have an opinion in this
19 area. And, Dr. Meyer, my question is, can you tell
20 me whether you have an opinion that one of the
21 reasons -- that is one of the reasons for
22 advertising in those areas or it isn't?
23 MR. PROCTOR: Object to the form.
24 THE WITNESS: It's not a reason that I'm
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1 familiar with that I see businesses or
2 companies engaged in advertising mature
3 product or service as a reason for spending
4 their advertising dollars the way they do.
5 BY MR. SMITH:
6 Q. That's not my question, Dr. Meyer, and
7 you know it's not my question.
8 My question is I'm not concerned
9 about how they spend their advertising dollars, the
10 way they do, or how much they spend. It's just
11 simply is that one of the reasons, in your opinion,
12 for advertising in those areas?
13 MR. PROCTOR: Object to the form.
14 THE WITNESS: I don't know how you're
15 defining how the purposes of advertising are
16 defined. By whom?
17 BY MR. SMITH:
18 Q. By the person spending the money.
19 A. Yes, and --
20 Q. Is one of the reasons they spend the
21 money to try to obtain first-time users of the
22 product category and have them buy that particular
23 advertiser's product?
24 I didn't ask you whether you thought
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1 it was the major reason. I'm just asking you as to
2 whether or not you think it is one of the reasons.
3 A. It could be, but it's not one that I've
4 heard expressed because when advertises talk about
5 how they spend their money, they always talk about
6 how they can spend their money most efficiently to
7 reach their existing customers plus those customers
8 who might be in the mood or be looking to switch
9 brands from one to another.
10 Q. Let's just put that together and maybe we
11 can do it shortly and fairly.
12 You're indicating to me that the
13 reason of obtaining first-time purchasers of a
14 product category to buy their product could be one
15 of the reasons that product sellers advertise; is

16 that correct?
17 A. I'm saying that that's a possibility, but
18 I've never heard it expressed that way.
19 Q. That wasn't my question. I'm just asking
20 you -- you just told me that it could be true; is
21 that correct?
22 A. Yes. In that context, yes.
23 Q. And you've also told me, in fairness to
24 you -- and I'd just as soon not get into a debating
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1 or forensic issue over it, but just a little bit of
2 directness -- in fairness to you, you also said
3 that you have never heard any manufacturer or
4 seller ever say, regarding a product that was
5 already in existence, that one of the reasons they
6 advertised was to obtain new users to purchase
7 their product; you have never heard any seller ever
8 say that; is that correct?

9 MR. PROCTOR: Object to the form.

10 THE WITNESS: That would vary from
11 product to product.

12 BY MR. SMITH:

13 Q. I'm talking about -- we already
14 acknowledge we're talking about products that have
15 already been on the marketplace. It's not a brand
16 new product like you indicated a VCR.

17 A. Understood.

18 Q. Now having said that, you have never in
19 your life ever heard any seller ever say that one
20 of the reasons they advertise is to obtain
21 first-time users of products -- and, again, other
22 than products that have never been on the
23 marketplace before -- is that correct?

24 A. There may be, in fact, there probably are
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1 some product categories that are out there that
2 target different consumers where that would be a
3 factor, the first-time consumer would be a factor.

4 Q. Okay, so you have heard that said, and
5 you do believe that exists with some products of
6 that type?

7 A. Yes.

8 Q. But you do not believe that exists in
9 cigarettes; is that correct?

10 A. That is correct.

11 Q. Now, when is the first time that -- other
12 than smoking cigarettes yourself, that you've ever
13 been involved with the tobacco companies?

14 A. Back in 1988.

15 Q. And how was it that you first became
16 involved, Dr. Meyer?

17 A. I was contacted by a lawyer who
18 represented the tobacco industry.

19 Q. And the lawyer's name?

20 A. Alan Purvis.

21 Q. And his relationship with the tobacco
22 industry was what?

23 A. At the time he was a member of the Shook,
24 Hardy & Bacon law firm in Kansas City.

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1 Q. That's the same law firm that's defending
2 you in this deposition today?

3 A. That is correct.

4 Q. And the reason he contacted you, as you
5 understood it, what was?

6 A. He had heard about --

7 MR. PROCTOR: I'll object to the form,
8 Russ, as long as you're asking his
9 understanding and not what was communicated to
10 him by Mr. Purvis. That would probe into
11 mental impressions and would be protected
12 under the work product doctrine.

13 BY MR. SMITH:

14 Q. What was your understanding as to why
15 Shook, Hardy & Bacon contacted you in 1988
16 regarding tobacco?

17 A. Mr. Purvis had been given my name by an
18 academic researcher as someone that had expertise
19 in advertising, marketing, and consumer behavior and
20 that that would be a person that he might be
21 interested in talking to about the issue of
22 cigarette advertising.

23 Q. What was it that you were asked to do?

24 A. Initially, Mr. Purvis requested a copy of
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1 my academic vitae, and I provided him with that.

2 And then I went to a meeting in
3 Kansas City with Mr. Purvis, and I talked about my
4 background.

5 Q. And I assume that he then asked you to do
6 further work?

7 Your background and his checking into
8 you satisfied him that he wanted to do further
9 work -- he wanted you to do further work; is that
10 correct?

11 A. He did ask me to do some work after that
12 first meeting, yes, that is correct.

13 Q. And what was that, sir?

14 A. He asked me to review some expert witness
15 depositions.

16 Q. And would those have been expert witness
17 depositions that were from the plaintiff or from
18 the defense?

19 A. I believe there were some from both.

20 Q. And what were you supposed to do in that
21 review, as you recall?

22 A. What he asked me to do was to look them
23 over and to share with him my reactions to what it
24 is I read.

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1 Q. Did you do that?

2 A. I did.

3 Q. What were your reactions?

4 A. My reaction was one of trying to get a
5 handle on how the advertising process was being
6 presented and explained by witnesses on both sides.

7 Q. What did you conclude?

8 A. Well, it's -- at this stage, I was struck
9 by the mischaracterization, in some instances, of
10 how the advertising process, in fact, works,
11 assuming some powers to advertising that have never

12 been documented and ignoring other aspects of
13 advertising and its influence that, in fact, have
14 been documented over and over.
15 Q. What was the mischaracterization that you
16 saw?
17 A. For example, that advertising was a major
18 factor in causing young people to start smoking and
19 for them to continue to smoke.
20 Q. You felt that was inaccurate?
21 A. Yes.
22 Q. For the reasons you've stated here today?
23 A. Yes.
24 Q. Any additional reasons?

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1 A. The power of advertising --
2 Q. I don't want to go there for a minute. I
3 thought that was a separate category.
4 The one -- mischaracterization and
5 power of advertising is in the same box?
6 A. Yeah, the power of advertising generally
7 to cause people to behave in a certain way, and
8 specifically as it applies to the decision to start
9 smoking cigarettes.
10 Q. Okay, and we haven't covered that yet, is
11 that correct, or have we? Your position was the
12 same then, that it's caused by a person's peer
13 group?
14 A. Among other things, yes.
15 Q. Was your opinion the same then as it is
16 now?
17 A. Yes.
18 Q. And what was the third item?
19 A. It was the fact that some things in the
20 influence of advertising have been ignored,
21 underplayed, or omitted entirely.
22 Q. Let me catch up with you, if I may. I
23 don't want to misstate this, and I want you to
24 correct me if I'm stating it wrong.

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1 The first one was -- that you were
2 struck by looking at these depositions was what you
3 perceived as being a mischaracterization of the
4 influence of tobacco advertising on people
5 beginning to smoke, the second one was the power of
6 advertising in that area, and I'm beginning to
7 perceive that those are actually in one box, one
8 category; those two are combined, or are those two
9 separate categories?
10 A. They would be separate to the extent that
11 the real power and influence of advertising is not,
12 as I've stated, to get someone to start smoking.
13 But it, nonetheless, plays a powerful role in the
14 process. And that part is either underplayed or
15 ignored.
16 Q. And what is that?
17 A. And that's the need for -- in any mature
18 product category, like cigarettes, for example --
19 of the need to compete one brand against the other.
20 In order to do that, you have to
21 spend your advertising dollars. And that goal is
22 to preserve and keep your existing customers, brand

23 loyalty; and then, to a much lesser extent, get
24 that percentage of smokers out there who might be
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1 looking to switch brands, to get them to switch to
2 your brand and away from the competition.

3 Q. How about the influence of advertising?

4 A. Okay, the other thing is, is that --

5 Q. I think that was the third item, if I'm
6 understanding what you'd indicated?

7 A. Yes. Generally the influence of
8 advertising, as it applies to cigarettes but as
9 well as to a lot of other product categories, or
10 almost all other product categories, is that
11 advertising can play a role in determining your
12 brand choice, but then, from that point on,
13 advertising's role is minimized and is dwarfed by
14 the person's experience with actually buying the
15 brand and using the brand.

16 So, in effect, advertising can say
17 whatever it wants to say to get you to try my
18 brand, but if I'm not satisfied when I buy your
19 brand, all the advertising in the world is not
20 going to have any effect on me. I'm not going to
21 go back and buy your brand because it hasn't
22 delivered and hasn't met my expectations.

23 And I think that's a factor that
24 was -- I did not see much of, if any, in the
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1 discussion of the documents that I had read.

2 Q. Let me ask you this question. You were
3 in the fast-food industry, you say?

4 A. Yes.

5 Q. Let's say that when McDonald's advertises
6 its hamburgers, is it trying to get first-time
7 users as well as retain its client base, its
8 customer base?

9 A. Their primary interest is in getting
10 repeat purchasers.

11 Q. But, also, is a smaller purpose to get
12 new business?

13 A. Getting new business away from other
14 competitors, sure.

15 Q. How about getting brand new business?

16 A. I suspect very little, if any, of their
17 advertising budget is earmarked accordingly
18 because, again, where are they getting their
19 business from, where are they going to keep getting
20 their business from? And that is from their
21 existing customer base and from the people that
22 come in time and time again.

23 So young children coming in and
24 requesting a Happy Meal, again, if they're not
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1 satisfied with the Happy Meal, they'll want to go
2 to some other fast-food place.

3 So kids, teenagers, adults, elderly,
4 I mean they run the entire gamut in terms of what
5 they want their advertising to do. And you'll see
6 their advertising having appeals to all different
7 ages of fast-food consumers. That's because they

8 want you to come to McDonald's, and they want you
9 to come back to McDonald's. They don't want you to
10 go to Burger King.

11 Q. Is it true McDonald's has done research
12 that indicates when they could bring a young person
13 into the store, they're going to have more people
14 come with them?

15 A. Absolutely true.

16 Q. And the fact of the matter is, isn't that
17 their primary target because of that?

18 If they can get a child to come in,
19 the child has a good chance to bring the
20 grandparents, the parents, and others, and that's
21 their prime goal of all their advertising targets?

22 A. It's certainly one of their major goals.
23 But, again, a big part of their bread and butter is
24 also going to be from people that don't come in

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1 with their children at all.

2 If you look around a typical
3 McDonald's, for example, during a noon hour, you
4 won't see -- obviously during school time, but even
5 with preschoolers -- you won't see a lot of kids in
6 there. You'll see some, but you'll see mostly
7 adults, and you'll see kids coming over from school
8 during their lunch hour.

9 Q. Do you agree, though, that their primary
10 target for advertising, numero uno, is the
11 children?

12 A. Actually, McDonald's has a multitiered--

13 Q. I don't -- I'm not quarreling with that.
14 I believe you. They are highly sophisticated.

15 But isn't their prime target
16 children, if you're going to categorize them?

17 A. No. Certainly one of their prime
18 targets, but it's not their single prime target or
19 their most important prime target.

20 Q. What's their most important prime target,
21 more important than children?

22 A. Again, they have -- where they get most
23 of their business from forms their prime target.

24 Q. And other than children -- if it's not
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1 children, who do you think is their prime target?

2 A. Children, teenagers, young adults, and,
3 to a lesser degree, older adults.

4 Q. And which is number one, in your
5 judgment?

6 A. I don't think that they -- they rank
7 order them.

8 Q. You don't have an opinion on that then?

9 A. My opinion is that their advertising
10 strategy is tiered equally to those people, those
11 customers, who provide their customer base and
12 provide most of the sales of McDonald's food
13 products.

14 Q. But we're asking who that group is right
15 now, who is prime number one of that group, if you
16 have an opinion as to who it is?

17 And you can put them in groups of
18 children, teenagers, young adults, older adults.

19 Say there's four categories. Is that generally how
20 you acquainted them a couple minutes ago?
21 A. Yes.
22 Q. Of those four groups, do you think they
23 have a prime target of those four?
24 A. I would think that they're almost equally
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1 divided among the children, teenagers, and young
2 adults.
3 Q. Okay, would -- if you were going to
4 divide it into those three categories, in your
5 judgment would the grouping of children and
6 teenagers be the highest of those three?
7 A. I don't know that.
8 Q. Let me ask you this question. McDonald's
9 advertises hamburgers, Wendy's advertises
10 hamburgers, Big Mack or Big Boy advertises -- who
11 is the other one?
12 A. Burger King.
13 Q. Burger King, thank you.
14 Those three, if they're all pushing
15 hamburgers, is there a cumulative effect of people
16 buying hamburgers? Does that help the overall
17 product sales of hamburgers or not, in your
18 judgment?
19 MR. PROCTOR: Object to the form.
20 THE WITNESS: I don't know what
21 influence, if any, there is on overall
22 hamburger sales as a result of people buying
23 hamburgers at one of the many fast-food
24 places.

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1 BY MR. SMITH:
2 Q. If McDonald's, Wendy's, and Burger King
3 all quit advertising hamburgers for two years, and
4 no one else was advertising them, do you think
5 their hamburger sales overall would drop?
6 A. That would depend on what they were
7 advertising, if they weren't advertising
8 hamburgers.
9 Q. Say they're advertising everything else
10 just the same.
11 A. Certainly their sales of their hamburger
12 products would probably go down at least a little
13 bit, maybe a lot. I'm not sure.
14 It depends on what other product
15 lines and how much they would continue to be
16 attractive to a fairly wide range of their existing
17 clientele and customers.
18 Q. Let's say that, for the sake of argument,
19 that they have -- they have a lock on the entire
20 market -- McDonald's, Wendy's, Burger King, and
21 throw Arby's in there -- say those four have it
22 all, okay, in the fast-food sandwich line for the
23 sake of argument, and they all decide to quit
24 advertising, period. No advertising at all for two
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1 years. Do you think their overall sales will fall?
2 A. Yes, because there are a lot more --
3 there's a lot more competition out there who, I

4 would assume, would continue to advertise and
5 advertise heavily because fast-food restaurants,
6 you know, people have a very wide array of
7 different choices that they can and, in fact, do
8 make when it's time to get something to eat. And
9 with an increasing percentage of households eating
10 more and more meals outside the home, this would be
11 true.

12 So places like Kentucky Fried
13 Chicken, Pizza Hut, Taco Bell, Subway, Cousins, the
14 other franchises would start to attract a large
15 amount of business.

16 Q. Say all the food franchises quit
17 advertising. Would fast-food sales drop, in your
18 opinion?

19 A. Fast-food sales would probably not --
20 would probably not be affected very much at all
21 because people at this stage are very much
22 accustomed to relying upon them.

23 Q. How about beer, let's assume there's no
24 beer advertising for the next three years by

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1 anybody. Do you think their sales would drop?

2 A. Well, beer sales, as I'm familiar with
3 them, have leveled off, or per capita consumption
4 has continued to decline in recent years.

5 Q. Do you think it would graph more sharply
6 downward if all advertising ceased for three years
7 by sellers?

8 A. Again, the answer to that would depend.

9 Q. All beer is gone, whiskey stays the same.
10 Do you have an opinion?

11 A. It would not only be distilled spirits,
12 but also be things like wine, wine coolers.

13 Q. Say the sales of all alcoholic beverages,
14 no advertising for three years. Do you think -- do
15 you have an opinion as to whether or not the
16 overall sales of alcoholic beverages would fall?

17 A. I would probably think that there would
18 be relatively little impact on the sales of
19 alcoholic beverages.

20 Q. Say the same thing about tobacco. Let's
21 say if there is no advertising of any tobacco
22 products for three years, do you think that
23 would -- do you have an opinion as to whether that
24 would impact tobacco sales?

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1 A. I would think, again, very little impact
2 on tobacco sales.

3 And, you know, in countries that have
4 never had any cigarette advertising and promotion,
5 you know, consumption, you know, continues. People
6 start smoking and continue to smoke. And, in some
7 countries, they smoke a lot of cigarettes. They
8 still do even though it's possible to advertise
9 cigarettes in some of those countries.

10 Other countries have banned cigarette
11 advertising where it used to be there, and they've
12 experienced not only not a drop in the overall
13 smoking but, in some cases, smoking has increased.

14 Q. Would it be your opinion, in the United

15 States, if there was -- withdraw that.
16 It's my understanding that you've
17 just indicated that it is your opinion that in the
18 United States, if there were no advertising of
19 cigarettes or any tobacco products for a three-year
20 period that, in your judgment, tobacco sales would
21 not fall?

22 A. No. What I am saying -- tobacco
23 consumption, sales of tobacco products in this
24 country have been declining, and quite steadily,

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1 since 1965. And I would assume that they would
2 continue declining.

3 Q. But I'm talking about -- withdraw that.

4 Accepting that change, which was
5 mentioned by you earlier and which we'll
6 incorporate in it, do you think the graph downward
7 would change in any fashion if there was no
8 advertising whatsoever of tobacco products for
9 three years?

10 A. Hard to say because it would depend what
11 other activities were going on once all of the
12 advertising stopped. And that would be most
13 significant in trying to make a guess as to what
14 would happen to overall cigarette sales.

15 Q. Let me ask you this question. Do you
16 have an opinion as to whether or not, if there were
17 no -- no advertising of any tobacco products over
18 the next three years, do you have an opinion as to
19 whether or not that cessation of advertising would
20 cause a reduction in overall tobacco sales?

21 A. I have a problem with the question
22 because, as I said, the question assumes that
23 advertising is -- that a change in the advertising
24 would -- that nothing else would change.

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1 Q. No, I tried to keep that out of that
2 question, and I'll try again with you.

3 I'm asking you whether or not, if
4 there was no tobacco advertising over the next
5 three years, whether or not, in your opinion, that
6 cessation of advertising would cause a reduction of
7 tobacco sales?

8 A. Yes. And assuming that that happens,
9 then my answer would be, be very difficult to
10 figure out what role, if any, ceasing advertising
11 played in what I would anticipate would be further
12 reductions in per capita smoking.

13 Q. I'm not asking you whether or not it
14 would be difficult to determine it. I'm asking you
15 whether or not the removal of advertising in and of
16 itself would cause a reduction.

17 A. Right. And in order for me to be able to
18 determine that, or anyone else to be able to
19 determine that, you would have to be aware of all
20 of the other factors that could, in fact, influence
21 a continuing drop in cigarette smoking.

22 Q. Bear with me a minute. You're referring
23 right now to the testing of the opinion.

24 You're saying it would be difficult

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1 to determine whether or not you were accurate or
2 not because there could be other factors in play.

3 I didn't ask you to take that into
4 account. I'm just asking you whether or not you
5 have an opinion as to whether the cessation of
6 advertising would cause a reduction in tobacco
7 purchase; would that be a causative factor, in your
8 opinion?

9 A. The answer to that is I do not know. I
10 suspect that it would not be a factor.

11 MR. PROCTOR: Russ, this is Craig. We've
12 been going for a while now.

13 MR. SMITH: Stacy, you stop me at any
14 time if I get going too long.

15 Do you want to take a break? What
16 time do you have?

17 MR. PROCTOR: I have 3:10.

18 MR. SMITH: Stacy, what time do you have?

19 THE COURT REPORTER: I have -- on my
20 machine it's 3:12.

21 MR. SMITH: We'll take a break now.

22 (Whereupon, a short break
23 was taken.)
24

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1 BY MR. SMITH:

2 Q. Dr. Meyer, let me ask you this question
3 on this topic. How valuable is advertising for
4 start-up products, in your opinion?

5 A. Advertising for a start-up product is --
6 can be of enormous value and is, in fact, the key
7 ingredient for most start-up products at least to
8 get consumers to the point where they will engage
9 in what we call trial, they try the product.

10 After that, if the product meets
11 their expectations -- again, all the advertising in
12 the world won't make any difference if the product
13 does not deliver. But at that stage, to generate
14 awareness and to hopefully lead to consumer trial,
15 advertising is a very important factor.

16 Q. When you use the phrase, "start-up
17 product," what you do mean?

18 A. This would be a product in a category
19 that consumers have very little knowledge of.

20 At some stage back in the early
21 1950s, household air conditioners was a good
22 example, television sets at one point, radio sets
23 at one point, VCRs, DVD players. Cell phones is
24 something that might even be a variation on

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1 something that's already known but is so unique in
2 its characteristics, that it really is like a brand
3 new product.

4 Q. What would examples of that be, please?

5 A. The cell phone, for example, is a really
6 good example especially the current cell phones
7 which enable you to do more than just place and
8 receive a call where you can get e-mail messages,
9 and you can send limited e-mail messages, and you
10 can see them displayed on the little screen. You

11 know, it's not just a telephone anymore.
12 Q. Can you give me examples in the fast-food
13 industry?
14 A. From the fast-food industry, well, I
15 think when pizza -- when the Pizza Hut concept
16 emerged, that was a real good example of where they
17 turned something that was part of restaurants but
18 not thought of as being a fast-food competitor,
19 when they turned it into that and franchised it,
20 that would be a good example in the fast-food
21 industry of something of a food type which was
22 normally not considered to be a fast-food item
23 which was then put into that category.
24 Q. Any other examples in the fast-food

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1 industry?
2 A. None that -- none that come to mind at
3 this point.
4 There have certainly been variations
5 on different kinds of food products and sandwiches
6 and salads and different ways in which the food is
7 prepared and that kind of thing, but basically
8 just, you know, something else new on the menu
9 which really wouldn't be what I would consider to
10 be a start-up product in the same sense I talked
11 about it with VCR and DVD players.
12 Q. How about in the automobile industry?
13 A. Maybe one of the things -- it would be
14 kind of borderline in my mind -- the emergence of
15 minivans. It's like a station wagon, but it's not.
16 It's like a sedan, but it's not.
17 As a kind of a new type of vehicle,
18 certainly the four-wheel drive vehicles and the
19 popularity of sport utility vehicles like the Ford
20 Explorer and Jeep Cherokee, probably different
21 enough to be, you know, something where people were
22 wondering like, What is that when it drives by.
23 That was certainly true in the early
24 days of minivans and certainly true in the early

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1 days of sport utility vehicles. And it's kind of
2 like well, I obviously recognize it as being a
3 motorized vehicle, but it's not like anything I've
4 seen before so what's going on here.
5 Q. Do you play any sports today?
6 A. No, I do not.
7 Q. When you -- you broadcast baseball games?
8 A. I did.
9 Q. Any changes in baseball that you would
10 consider to be in that category?
11 A. Nothing really dramatic in terms of
12 baseball that comes to my mind.
13 I mean I think for a while there,
14 when they went from wood to aluminum bats and were
15 using those, at least at the high school and
16 college level, might have had some kind of a change
17 on the game, and athletic programs then suddenly
18 found themselves with buying a whole new type of
19 baseball bat.
20 But it didn't really change the
21 nature of the game at all. And in terms of what

22 baseball was, as it was represented to the sports
23 fans, they still recognized it as baseball.
24 Maybe T-ball, I guess -- I don't
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1 know -- for younger kids.
2 Q. Let me ask you this. Can we -- let's go
3 to -- have we covered the bases, reasons, facts and
4 information that supports your opinion on page 5 in
5 the second -- the first full paragraph, second
6 sentence, any of them we haven't covered?
7 A. I would stand by all of my previous
8 answers in responding to your questions on this,
9 yes.
10 Q. Do this for me then, Dr. Meyer. As you
11 sit there, can you specifically recall any others
12 that aren't stated in your report?
13 A. Again, there are some -- there are some,
14 again, references on advertising textbooks that
15 would come to mind which would essentially say the
16 same thing as is stated here.
17 Q. Are those ones -- were you relying on
18 those even though they weren't stated in your
19 opinion -- I mean in your report?
20 A. Well, again, they're references that I've
21 read that say this, and they would say nothing
22 different than the references that are here.
23 Q. Well, if there's any others that you're
24 relying -- I'm objecting to hearing them, but I'm
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1 asking to hear them at this point.
2 I just want to make sure I'm not
3 shooting ducks in the blind or whatever.
4 A. Understood.
5 Q. Or that I'm not -- that I'm not the blind
6 one. I just don't want to go to this trial
7 blindfolded, that's all.
8 A. Well, I'll stand by the references that
9 are here. Again, there are other examples that I
10 could give you.
11 For example, in general advertising
12 texts, as I mentioned, there is O'Guinne, Allen and
13 Semenik, which is out there, the other best-selling
14 advertising textbook.
15 And they talk a lot about the goal of
16 advertising being to differentiate among brands,
17 preserve brand loyalty, and then to attract brand
18 switchers.
19 Q. And the name of the book -- was it a
20 book, you said?
21 A. Yes, it is. It's called Advertising.
22 Q. And the part of the book you're referring
23 to, the pages?
24 A. I don't have the pages off the top of my
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1 head, no.
2 Q. Chapter?
3 A. The chapter would be on consumer
4 behavior.
5 Q. The date of publication?
6 A. The first edition, I believe, was 1998.

7 The second edition is -- I think it's 2000. It
8 might even have a 2001 publication date.
9 Q. Okay, have we covered that opinion, its
10 basis, reasons, facts, information upon which you
11 relied when you stated it in your report?
12 A. Yes.
13 Q. Next opinion -- withdraw that.
14 When I say, "next opinion," I want to
15 stop at any opinion, as we go through here, upon
16 which you think there are additional bases,
17 reasons, facts, or opinions upon which you relied
18 when you expressed the opinion in your report.
19 A. Do you want to go through with additional
20 sections at this point or --
21 Q. Yes, sir, please.
22 A. Okay, the next one is, "The scope of
23 cigarette advertising expenditures." Is that the
24 one you want to --

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1 Q. I don't care. You know, I want -- you
2 take me. What page are you on?
3 A. This starts at the bottom of page 5 and
4 carries over on to page 6, and the opinion is
5 that --
6 Q. I don't see an opinion there -- oh, wait
7 a minute. Forgive me. "The level of advertising
8 expenditures reflects" --
9 A. "The fact that cigarette manufacturers
10 operate in a highly competitive advertising
11 environment."
12 Q. That's an opinion right there?
13 A. Yes.
14 Q. And have you stated the -- are all the
15 bases, reasons, facts, and information upon which
16 that opinion is based stated?
17 A. Yes. I have provided as up-to-date
18 figures as I have which --
19 Q. That one is covered in your report?
20 A. Yes, it is.
21 Q. The next -- is there another opinion in
22 your report upon which you don't think you covered
23 the supporting material?
24 A. Okay, we can go down to page 7.

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1 Q. Yes, sir.
2 MR. PROCTOR: Russ, this is Craig. I
3 would note that the fax that we indicated we'd
4 send to you has been sent about half an hour
5 ago, so you likely have a list of additional
6 sources probably sitting on your fax machine
7 right now.
8 MR. SMITH: Okay, it's not going to be
9 much good at this moment, I don't think.
10 But, at any rate, let me talk with
11 the witness.
12 BY MR. SMITH:
13 Q. What else would you have here -- you have
14 been referring to page 7?
15 A. Yes, that would be the next opinion.
16 Q. And which one -- just -- if you could
17 direct my eyes to the part you're referring to, I'd

18 appreciate it.
19 A. Yes, this is -- "I also expect to testify
20 about the standard communication model as it
21 applies to consumers' evaluations of the
22 credibility of advertising generally."
23 Q. And that one -- in the middle of that
24 paragraph there seems to be -- you say, "It is
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1 apparent that consumers in the past have not found
2 and currently do not find most advertising to be
3 very believable or convincing."
4 A. Yes.
5 Q. And are there other supporting materials
6 for that that aren't stated in your report, sir?
7 A. Yeah. Again, that general advertising
8 texts would very thoroughly document that as well,
9 and --
10 Q. Could you tell me what you have in mind?
11 A. Again, the O'Guinne, Allen and Semenik
12 book.
13 Q. And the name of the book?
14 A. Advertising.
15 Q. The one you just referring to regarding
16 the last opinion?
17 A. That is correct.
18 Q. Does that now cover the supporting
19 material for that opinion as best you can recall?
20 A. At this point, yes.
21 Q. Any other opinions that you don't think
22 you've stated the supporting material in your
23 report upon which you are relying?
24 A. Okay, at the bottom of page 7.

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1 Q. Yes, sir.
2 A. The last sentence that starts out
3 "Advertising messages are less believable".
4 Q. Yes, sir. Toward the top of page 8, and
5 then it has Engel after it?
6 A. That's correct.
7 Q. Okay.
8 A. Again, additional sources there where
9 this is covered would include Wells, Burnett and
10 Moriarity.
11 Q. And the name of that book?
12 A. It's in the List of Illustrative
13 References.
14 Q. Is that listed in there?
15 A. Not that I can recall. I mean I don't
16 recall the specific page number.
17 Q. And --
18 A. And, in addition, O'Guinne, Allen and
19 Semenik that I just mentioned in the two previous
20 cases also talk about the fact that consumers are
21 aware of the selling intent of advertising.
22 Q. Okay.
23 A. As is a book by John Howard on consumer
24 behavior.

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1 Q. Are you relying on that?
2 A. It's very much like the Engel, Blackwell

3 and Miniard --
4 Q. Are you relying on it or no?
5 A. Yes.
6 Q. Okay. Does that cover that opinion?
7 A. It does.
8 Q. Are there any other opinions, Dr. Meyer?
9 A. And, again, the awareness of the selling
10 intent accounts for the fact that consumers
11 discount nearly all of the advertising messages
12 available to them --
13 Q. Yes, sir.
14 A. -- or they ignore them or avoid exposure
15 to them.
16 Q. Okay.
17 A. Again, add to the references there,
18 O'Guinne, Allen and Semenik.
19 Q. Same place --
20 A. That I mentioned before.
21 Q. -- that you just spoke of?
22 A. That's correct.
23 Q. Okay, any others?
24 You folks there?

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1 A. Yes, I am. I'm looking for --
2 Q. Okay. Actually, I just -- I couldn't see
3 you. I was looking for you, but I couldn't find
4 you.
5 A. I think that takes us through it. Again,
6 nothing else comes immediately to my mind at this
7 point.
8 Q. Is that -- when you say, "through it,"
9 Dr. Meyer, you mean through the report?
10 A. Through the rest of the report and the
11 opinions expressed; that's correct.
12 Q. Let's talk a little bit about your
13 publications, please.
14 A. Yes.
15 Q. When you present a scholarly paper, you
16 indicate 200 scholarly papers presented at various
17 professional association meetings?
18 A. Yes.
19 Q. Now, those are in addition to the
20 chapters and books and in addition to the journal
21 articles that are listed in your report?
22 A. That is correct.
23 Q. What types of topics have you written on,
24 sir?

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1 A. A pretty interesting variety, actually.
2 Most of them, if not all of them,
3 center around the general category of how media
4 content, the kind of content -- whether it be news,
5 entertainment, advertising -- how various forms of
6 media content have an impact on people and
7 different types of people as either classified by
8 age, by gender, by ethnicity, by geographic
9 location, and then in different categories as well.
10 Q. And the purpose for that?
11 A. The purpose for that is, as I say, to --
12 as a scholar in the field, one of the ways in which
13 scholars in the field advance their knowledge and

14 advance the knowledge -- the original knowledge --
15 in the field, is to talk about the work that
16 they're doing and be present in a forum where there
17 are other scholars with similar interests that also
18 may be working in the area to give them an
19 opportunity to talk about what they're doing and
20 what they're finding, and then see how this
21 compares to and helps me refine my thinking and the
22 research that I do myself.

23 Q. Is this information valuable to somebody
24 who is selling a product?

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1 A. I'm not sure in what sense you mean
2 "valuable."

3 Q. Does it have value to them, this
4 information, this knowledge?

5 A. I think some of the information in some
6 of the papers that I've presented certainly could
7 have some value.

8 Q. And what would some of the value be, as
9 you see it?

10 A. Having an understanding, for example, of
11 knowing as much as you possibly can with as much
12 precision as you can about the audience that you're
13 trying to reach with your messages -- whether they
14 be news or entertainment or advertising -- and
15 having some sense of how your audience uses and is
16 affected by those messages, specifically what a
17 person in the audience brings to the message, not
18 just what the message brings to the individual
19 user.

20 Q. And why would someone want to know that?

21 A. I would imagine that it would enable them
22 to better understand the process that they were
23 engaging in, and it might be -- it might help
24 validate what they think is going on in terms of

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1 the effect or impact that it's having.

2 It might get them to think
3 differently about what it is they're doing, get
4 them to change the way in which they're
5 constructing those messages.

6 Those would be two key areas that I
7 suspect would be operating here of potential value
8 to people who are practitioners.

9 Q. I'm going to ask for copies of those
10 papers. Do you have access to copies of the
11 papers, Dr. Meyer?

12 A. I have copies of some of them, but most
13 of them I no longer have in my possession. This is
14 over the last 33 years so.

15 Q. I'm going to ask for copies of what you
16 have, if I may.

17 A. Well, one of the things that might help
18 is, is that a lot of the papers that I presented
19 later found their way into publication. And so
20 when you get access to my publications, you will
21 have access to a lot of the papers that I
22 presented.

23 Q. Well, if you have copies of any of these
24 scholarly papers, I guess -- and they're readily

1 available -- I'd ask for copies of them, and Craig
2 will get back to me on that.

3 MR. PROCTOR: That's right.

4 BY MR. SMITH:

5 Q. You have, "Two papers received Top Three
6 Paper awards from the Broadcast Education
7 Association"?

8 A. Yes.

9 Q. What does that mean?

10 A. There is a professional organization of
11 people across the country that teach in colleges
12 and universities, and including some junior
13 colleges, which people teach courses that are part
14 of a curriculum that includes at least, in part,
15 courses in broadcasting. And this could mean
16 cable, satellite, television, radio, the --
17 basically the forms that started out simply as
18 broadcasting and have been expanded to include
19 these new media.

20 They hold a conference, and they have
21 various divisions for people who have interest in
22 various aspects of broadcast education.

23 And there is a research division.
24 And in the research division, they hold a

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1 competition where you can submit a paper, and then
2 it's blind-reviewed by peers, in other words, name
3 and institutional affiliation is removed from the
4 paper. And it's sent out for review to people who
5 are experts.

6 They read the papers and then make a
7 recommendation on whether or not the paper has
8 anything of substance or interest to people who
9 will be attending the conference.

10 And then this is also linked to the
11 Broadcast Education Association's publication of a
12 scholarly journal called the Journal of
13 Broadcasting and Electronic Media, which they
14 publish.

15 Q. I notice in the -- withdraw that.

16 At what point in time were those
17 awards, the papers that received the Top Three
18 Paper awards?

19 A. One of them was -- I'm trying to think
20 back.

21 One of them was back in 1974, and I
22 think one of them was in 1978, if I recall
23 correctly. I'm not sure about that.

24 Q. Have you ever -- when -- when we look at
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1 those awards, those five -- those ones with the
2 dots on the side as far as grouping?

3 A. Yes.

4 Q. Approximately when did you receive the
5 last award?

6 A. 1997.

7 Q. And which one was that?

8 A. That was the Founders' Award for
9 Excellence in Scholarship and Research.

10 Q. The Wisconsin Green Bay award?
11 A. That's correct.
12 Q. And how about before that?
13 A. Before that it would have been, I think,
14 1987.
15 Q. The one that you got in 1997, what
16 brought that about?
17 A. This was an award -- they give out an
18 award in a number of different categories at my
19 university. And it's an all-university-wide
20 competition.
21 Faculty members are nominated based
22 on their career research achievements over a very
23 extended period, obviously.
24 Q. As opposed to one specific project?
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1 A. That's right, or one specific year even.
2 So it's kind of like a multi-year award.
3 And that, I should mention, is
4 separate from the awarding of the named
5 professorship, the Ben J. and Joyce Rosenberg
6 professorship, which is the named professorship
7 that was awarded to me again based on my research
8 record. And it's something that's given and is open
9 to all competition from all faculty across the
10 university.
11 Q. And that's sort of an over-time type
12 award?
13 A. Yeah. That was awarded to me in 1986. I
14 was named the first Rosenberg professor. And there
15 have been several other ones named since then, a
16 fairly common practice within universities.
17 But it's done on the basis of
18 research and the quality of the research and the
19 quantity of the research done over time.
20 Q. These scholarly paper presentations, are
21 you doing more or fewer presentations now than you
22 used to?
23 A. I would say -- I would say fewer. And
24 that's because I have been involved
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1 administratively at the university.
2 Q. That's since you became chair?
3 A. Yes. So since 1993, I've not done as
4 many papers at as many different conferences as a
5 result of that.
6 Q. And I noticed the research grants, the
7 last one I see listed -- well, there was one for
8 1990. What was that for?
9 A. 1990 it was -- it was a study which
10 looked at the uses of network television news by
11 adolescents and college students.
12 Q. What was the purpose of that one? What
13 were you trying to determine?
14 A. What I was trying to find out was -- one
15 of the things that I had been able to observe from
16 industry data was that the ratings, the size of the
17 audience for the network evening news on NBC, CBS,
18 and ABC had been steadily declining.
19 And I had also been seeing reports
20 that more and more college students and high school

21 students were not relying on the news for their
22 information about what's going on in the world,
23 that they were actually relying on things like late
24 night talk shows where David Letterman or Jay
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1 Leno -- at the time, Johnny Carson -- would make
2 jokes about current events, and that more and more
3 young people were going less to established news
4 sources and more to sources that really aren't in
5 the business to be presenting the news in the first
6 place.

7 And what I wanted to find out was, is
8 how that had an impact on their current knowledge
9 level of people, issues, and events involved in
10 current newsworthy things.

11 So what I did is I surveyed their
12 television viewing habits, radio listening habits,
13 newspaper reading, reading of news magazines, and
14 then I asked them a series of questions -- who is
15 the secretary of defense, who is the vice president
16 of the United States, questions like that -- to see
17 what level of common knowledge they had and what
18 connection there was to whether or not they watched
19 the news on television from the networks or maybe
20 even from CNN or if they were getting it from other
21 sources where this kind of information was not
22 being communicated.

23 Q. Who is the National Association of
24 Broadcasters?

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1 A. National Association of Broadcasters is a
2 national professional group. It's membership is
3 composed of just about all radio and television
4 stations licensed by the FCC across the country.

5 Q. Why do they give out research grants?

6 A. They have a -- an interest in having
7 academics who have research training and the time
8 and expertise to investigate projects that the
9 industry may not have the time and expertise to do
10 themselves. And so they award a series of grants
11 on an annual basis to help defray the cost of data
12 collection.

13 Q. And this information they consider
14 important for them insofar as the welfare of TV and
15 radio stations that they're -- of whom their
16 members comprise; is that -- do I understand you?

17 A. Yes. I don't think that they consider
18 each and every study -- when it comes back to them
19 and a report is written up, I don't think they
20 consider each and every study to be of equal value.

21 But certainly out of all the studies
22 that they funded, they probably manage to learn
23 quite a bit in certain key areas, as I say, where
24 they don't either have the time or resources to do

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1 themselves or the expertise.

2 Q. You did a lot of studies for the
3 department of education earlier in your career, is
4 my impression?

5 A. Yes.

6 Q. And the general purpose of those studies,
7 if you were to group them all together in a big
8 ball -- could you do that -- and did they have an
9 overriding purpose or focus?

10 A. Sure. Very easily summarized. In both,
11 the case of the pilot for a radio program series
12 and for the television series, two different
13 programs directed at teenagers done for public
14 television. And the purpose there was they
15 produced a sample episode, and what they wanted to
16 find out was, they had some objectives for this
17 episode in terms of what they were trying to
18 communicate to teenagers, to a teenage audience.

19 So what they did is they had me test
20 these episodes with groups of teenagers at various
21 parts in the country, and they watched the episode
22 and they answered some questions about it.

23 So I was concerned with whether they
24 liked the program; whether they would look forward

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1 to watching more episodes in the series; what parts
2 they liked specifically; what they disliked; and
3 also, to an extent, what they learned from it. So
4 there were a number of objectives in terms of their
5 attitude, their feelings about it and the
6 information gained from it.

7 And then I reported back to them on
8 the degree to which each of the programs was
9 successful in its pilot form and what I thought,
10 you know, could be done to make the programs
11 better, more on target as far as better serving the
12 interests and needs of student population that they
13 were aiming the programs at.

14 Q. Through your work, you had a lot of focus
15 upon, as I understand it then, upon teenagers?

16 A. Yes, children and adolescents.

17 Q. Did that just sort of happen, or was that
18 sort of a goal of yours?

19 A. Probably coincided to a degree with the
20 fact that I had children of my own.

21 Q. How many do you have?

22 A. I have two children. Two daughters.

23 Q. Their ages?

24 A. 29 and 23.

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1 Q. What does your wife do?

2 A. My wife is -- she used to teach at the
3 University of Wisconsin, Green Bay. She retired
4 five years ago.

5 Q. Do you think -- you mean the fact that
6 you have children of your own influenced your
7 heading in that direction?

8 A. It had a great deal to do with it, yes.

9 I was concerned, as a parent, about
10 what was going to happen to my children when they
11 came into the world and how they were going to deal
12 with media, and how they could effectively use
13 media and use, for example, use television for lots
14 of good purposes, and how they could avoid and how
15 I could inoculate them from some of the potentially
16 harmful effects.

17 Q. How would you do that? How would you
18 recommend doing that?

19 A. In fact, I usually do a series of these
20 for the Parent Teachers Association for the local
21 schools in the entire northeastern Wisconsin
22 region. I think I've probably been to just about
23 all of the elementary and even secondary schools.
24 Part of what I do is on making
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1 television work for your children, not against your
2 children.

3 And one of the things I recommend,
4 for example, is, as parents, take stock of your own
5 television viewing habits. Monitor how much time
6 you spend in front of the television and pay
7 attention to what programs you watch because your
8 kids, from earliest ages on when they discover
9 television and are attracted to television, they
10 will pay attention to what it is you do as well as
11 what it is you say. But behavior counts for a lot.

12 I also tell them that they should
13 watch television periodically with their children.
14 They should ask their kids questions about what
15 they're getting out of the programs that they're
16 watching.

17 I encourage them to restrict how much
18 television their children watch and have their
19 children make choices in terms of how they spend
20 their allotted television viewing time.

21 So if you get two hours to watch
22 television at night, once your homework is done,
23 you get to choose from an acceptable range of
24 programs what you're going to watch. But when the
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1 two hours is up, that's the end of it. So you have
2 to choose and choose wisely. Things like that.

3 Q. What do you see as the danger zones for a
4 parent to watch out for for children in television?

5 A. For me, the danger zone is always
6 children who have access to content that they are
7 simply not ready for.

8 And this usually comes about when
9 children are allowed to watch anything that's
10 available to them on television. There is no
11 parental supervision, and there aren't parents
12 around to monitor -- at least some parental
13 figure -- or there's not some device that limits
14 their access to different types of programs.

15 Q. Can you give me examples.

16 A. Well, programs, for example, that might
17 have sexually explicit content. It's very clear,
18 in my mind, that young children are not prepared
19 for it.

20 And if parents are in a situation
21 where this type of exposure is possible, obviously
22 this is something, in my mind, that they should
23 take every step necessary to prevent this from
24 happening.

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1 Q. Other areas that come to mind?

2 A. I think certain kinds of graphic
3 violence. For example, again, kids not really
4 prepared for it.

5 There's a lot of graphic violence in
6 movies where teenagers and adults can kind of --
7 they realize it's staged, it's done for effect,
8 it's done to be very sensational. It's almost, as
9 we call it, a cliché. They kind of look forward to
10 it as acting out a ritual, and it's really kind of
11 simple and straightforward. They don't take it
12 seriously, in other words.

13 Young children may not realize that
14 that's what's going on and could be affected in
15 some negative ways.

16 Q. Are there other negative aspects to
17 television you think children should be protected
18 from?

19 A. I would think that certain kinds of news
20 stories and news content, as a parent, I think
21 parents have to be very much concerned about.

22 I know that a lot of parents
23 expressed concern when information was coming out
24 about former President Clinton and his involvement
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1 with Monica Lewinski.

2 They were using words on the 6:00
3 o'clock news that embarrassed a lot of parents and
4 put parents in kind of a difficult situation where
5 they wanted them to watch the news, but then, on
6 the other hand, they didn't want to have to explain
7 certain terms that they were uncomfortable with or
8 perhaps didn't think that their children were
9 prepared to deal with.

10 Q. Anything else come to mind?

11 A. I think that access to -- in certain
12 types of advertising on television, that parents
13 would have some concern over that.

14 They would be concerned more about
15 the kinds of programs they're watching and some of
16 the advertising that occurs.

17 Q. Can you give me examples of the
18 advertising you're speaking about?

19 A. Well, for example, if it's advertising
20 again for some sexually explicit product, that type
21 of thing would be -- certainly expect that parents
22 would be concerned about trying to screen out that
23 type of material from their children.

24 Q. Any other types of material come to mind?
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1 A. Well, it can be a situation where,
2 depending on the individual family situation and
3 what the family means are and what the family
4 values are -- and this would apply to entertainment
5 content as well -- you know, they may not want to
6 have their child exposed to a heavy diet of
7 commercials or programming which communicates
8 values that are inconsistent with the values that
9 are there in the household.

10 Q. Can you give me an example of that.

11 A. Well, I mean, for example, the attitude
12 toward the use of violence or the use of -- in

13 this -- like the Timothy McVeigh case and the death
14 penalty, you know. That's the kind of content
15 where -- that might be even part of commercials for
16 certain types of toys and things.

17 If parents don't want their kids
18 exposed to that, then they need to take steps to
19 avoid that or, as I said before, they really need
20 to plan to spend some time with their children so
21 their children have the proper frame of reference
22 to understand what these commercials are about.

23 Q. How about gross materialism on TV
24 advertising, how does that -- what do you think
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1 about that as far as something -- does that have a
2 negative impact on children, in your judgment?

3 A. I think it definitely can have a negative
4 impact on children who are not given the right
5 framework of values from which they can understand
6 what it means to buy things and to have things and
7 kind of the orientation that the family has toward
8 what it means to have a lot of toys or to have all
9 the things that cost a lot of money and the fact
10 that it's not necessary, or that the family can't
11 afford it, or that the family can't be in a
12 situation where everybody can have everything that
13 they see all of the time.

14 And this is a case, again, of dealing
15 with children and getting them to understand that
16 you have to work within certain financial
17 constraints in the household and also within the
18 constraints of the values that the family has for
19 how many things kids are allowed to buy and to have
20 and how they get them.

21 Q. How about cigarettes?

22 A. Again, the literature is very, very clear
23 on that and is very helpful in that regard.

24 And, again, what it shows is, is that
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1 in households where parents make no effort to
2 socialize their children into the negative aspects
3 of smoking, this can be a factor then that
4 contributes to a child starting to smoke, either
5 experimenting or continuing to smoke.

6 And, on the other hand, in households
7 where some attention is paid to this and there is a
8 clear, consistent policy which says, In this
9 household, you don't smoke. When you get to be 18
10 and you're on your own, you can make up your own
11 mind. But when you're under 18 and you're living
12 here in this household, you don't smoke, so if I
13 catch you smoking, you're going to pay some type of
14 a penalty -- you either can't go to an event, you
15 can't use the car, whatever the penalty might be --
16 that makes an enormous difference.

17 Whether or not there is parental or
18 adult supervision around when kids might have
19 access to or start smoking or experiment with
20 smoking, again, this is extremely important. And
21 so it says that parents need to play an active
22 role. And when they don't, it increases the risk
23 that their children will experiment with smoking.

24 Q. Does the ownership of a medium become
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1 involved in this issue?

2 A. I'm not sure I understand what aspect of
3 the ownership you're referring to.

4 Q. Whoever owns the particular network
5 that's involved?

6 A. I'm not getting the connection between
7 who --

8 Q. Who controls the content that goes out on
9 the TV stations?

10 A. The decision that's made for a network in
11 terms of which programs will be distributed on its
12 network to the affiliate stations obviously is made
13 at the network level. But that decision is not
14 made arbitrarily in the absence of any other input
15 from any other sources.

16 And by that I mean the audience and
17 how the audience responds to what they put out in
18 the past and similar types of programs on the
19 competing networks, that also informs that decision
20 of what's made available.

21 Q. The basis of it being important is what?

22 A. In terms of who is watching, in terms of
23 the composition of the audience and the size of the
24 audience, and also the reaction of the audience.

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1 Q. That's taken into account by the owner of
2 the station -- of the network?

3 A. Yes, the station and at the network
4 level, especially at the network level.

5 Q. What about the advertising that the
6 network puts out, who makes that decision?

7 A. All of the networks have a division
8 called standards and practices, as does the
9 National Association of Broadcasters.

10 They have -- which is an in-house
11 professional association service that they provide
12 in which they will screen television commercials
13 and radio commercials and, where appropriate,
14 recommend changes.

15 The networks also have the
16 possibility -- I mean the power to refuse an
17 advertiser's commercial if they don't like the
18 product or they don't like the way in which the
19 commercial is developed and structured.

20 Q. If you were the owner of a network, would
21 you permit cigarette advertising on your network?

22 A. If I was the owner of a network -- of a
23 television network?

24 Q. Yes, sir.

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1 A. That decision would be based on how
2 narrowly defined my audience was.

3 Q. Say you have a broad based audience, ABC,
4 NBC, CBS, or FOX?

5 A. I'm not sure how that would go.

6 I would suspect that most, most,
7 adult-oriented products that would want to
8 advertise on my network, that would be okay with

9 me. And they would certainly want to advertise on
10 adult-oriented programs, programs that reached an
11 adult audience.

12 Q. You'd permit them to advertise cigarettes
13 on your network?

14 A. Yes, I would.

15 Q. Would you be afraid of your daughter
16 seeing that ad?

17 A. Again, my younger daughter started
18 smoking when she was 16, and she was not exposed to
19 any television commercials.

20 And it wasn't the advertising, as she
21 would willingly, openly tell you. She started
22 smoking for the same reason that lots of kids do
23 and for the same reason that David Tompkin started
24 smoking. He started smoking because of the

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1 influence of his peers.

2 She wanted to appear to be older and
3 she wanted to impress her peers. As David Tompkin
4 said, That's what older kids did. Of course I
5 smoked. All the older kids smoked.

6 She was no different. And my
7 daughter, in that particular case, like many kids
8 today, and since 1971, have done so without any
9 influence of television commercials advertising
10 cigarettes.

11 Q. Your daughter is -- which one? You have
12 one 29 and one 22?

13 A. 29 and 23.

14 Q. Which one was it?

15 A. The 23-year-old.

16 Q. Does she still smoke?

17 A. Yes, she does.

18 Q. Do you think she's tried to quit?

19 A. She's talked about it. But, actually, as
20 she's said, she enjoys smoking too much that she's
21 not going to quit, at least at this point.

22 Q. Do you believe that the younger they are
23 when they start, the more difficult it is to quit
24 all other things being equal?

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1 MR. PROCTOR: Russ, objection here. I'll
2 allow him to answer any of these questions
3 based upon his own personal beliefs and
4 speculation, but obviously all of this goes
5 outside the scope of his expert opinion.

6 But I'll allow him to answer these
7 questions if I could have a standing objection
8 to the questions regarding --

9 MR. SMITH: You can.

10 MR. PROCTOR: Thank you.

11 THE WITNESS: Would you repeat the
12 question again, please.

13 BY MR. SMITH:

14 Q. Sure. Do you believe that, all other
15 things being equal, that the younger a person is
16 when they start, the more difficult it is for them
17 to quit?

18 A. I don't think -- I don't think that
19 that's a factor in and of itself.

20 Q. Do you think it's a factor, though, if
21 all other things are equal?
22 A. Since they're never equal, I don't think
23 it's a factor.
24 Q. You're telling me you don't have a belief
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1 one way or the other on that?
2 A. I think that there are a large number of
3 factors that go into determining whether or not one
4 individual finds it harder to give up smoking than
5 another person. There are just too many variables
6 involved. So, as I said, things are never "all
7 other things being equal."
8 Q. You think that's one of the variables,
9 the age when a person starts?
10 A. Again, it could contribute -- it could
11 contribute in a way, but very hard to parse that
12 out from other things that I think would obviously
13 be far more significant in determining whether or
14 not it's harder for one person to quit than
15 another.
16 Q. But you think it could be a factor?
17 A. Probably not in and of itself.
18 Q. Why do you say that? What does that
19 mean?
20 A. Because there are too many other more
21 important variables involved that talking about the
22 age at which you start smoking, it would be just
23 really too hard to tell.
24 Q. What are these other variables?

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1 A. The other variables would be your
2 reaction to and satisfaction with the smoking
3 experience from the very first experimentation to
4 picking it up at that point after that; the degree
5 to which smoking becomes culturally embedded in the
6 life of the individual child.
7 In other words, if smoking continues
8 to be an important factor for the peers and the
9 friends that the kid hangs out with, smoking
10 becomes more and more ingrained as a habit. And
11 these things then would tend to take over.
12 Smoking becomes associated with
13 certain activities over time.
14 Q. Does --
15 A. These are the things that make it
16 difficult -- might make it different to quit.
17 But there are other circumstances
18 where, I mean, people reach an age or reach a point
19 in their smoking history where they decide enough
20 is enough. They quit, and they're successful.
21 Some people, it doesn't work. They got to try
22 several times.
23 Q. The -- something being culturally
24 embedded, what does that phrase mean?

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1 A. Well, what it means is that as you go
2 about your day-to-day living and your day-to-day
3 activities, you get up in the morning -- for
4 example, a kid gets up in the morning, has some

5 breakfast, goes off to school, spends time at
6 school, goes for lunch hour, comes back to school;
7 after school, comes home, maybe goes to a part-time
8 job that is in the evening, maybe they go out in
9 the evening on weekends, etcetera -- day-to-day
10 living: Who they associate with, how they spend
11 their time, and what they're doing while they spend
12 that time. And if smoking is a part of that or not
13 a part of that, it becomes part of what's embedded
14 in the culture, which is their day-to-day living.

15 Q. Does the way in which they view the
16 people who are around them in their culture and
17 what they do impact their cultural -- was it
18 cultural environment; is that the phrase you used?
19 What was it?

20 A. Their day-to-day environment, yes.
21 Culturally embedded in the day-to-day environment.

22 Q. Culturally embedded.

23 A. Yes.

24 Q. If they're with certain peers, the peer
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1 group can influence them; is that correct?

2 A. Yes.

3 Q. And those people that they admire can
4 influence them as well; is that correct?

5 A. Yes, real-life people, sure. No question
6 about it.

7 Q. How about people who aren't real life?

8 A. There can be some influence there, but it
9 would depend on the product, and it would depend on
10 the person that's endorsing the product, and it
11 would depend on the individual child and that
12 child's peers.

13 Q. Part of our culture -- you mentioned how
14 we get up in the morning, we eat breakfast, we go
15 to work, and we may -- we go to school, and then
16 come home from school and go to a job.

17 Sitting down and watching television,
18 is that part of the daily existence in this
19 country?

20 A. Yes, for most people, sure.

21 Q. And --

22 A. As is reading the newspaper, reading
23 magazines, listening to the radio, talking.

24 Q. I'm assuming that advertisements are
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1 culturally embedded in our society?

2 A. Yes, as a media source, they are. As
3 media content, they are.

4 Q. I'd like to go back. 1988 was when the
5 tobacco industry asked you to get involved; is that
6 correct?

7 A. That is correct.

8 Q. And then the first thing you did was
9 review expert reports; is that correct?

10 A. No, I read depositions.

11 Q. I apologize. Correct.

12 After that, what was the next thing
13 you did?

14 A. The next thing I did was -- let's see. I
15 continued to read depositions, and then I was asked

16 to be an expert witness in a trial that took place
17 in Philadelphia in 1991.

18 Q. And what type of a trial was that?

19 A. It was the Ierardi case, I-e-r-a-r-d-i.

20 Q. And --

21 A. It was a Kent filter case.

22 Q. Did it have asbestos in the filter?

23 A. That was part of the issue, yes.

24 Q. What did you think about that?

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1 A. In what sense?

2 Q. The asbestos being in the filter?

3 A. Well, at the time, the -- asbestos back
4 in the early 1950s -- late 1940s, early 1950s --
5 asbestos was regarded as kind of the miracle
6 mineral.

7 It was fire retardant. Just about
8 every place was using asbestos for insulation.
9 They were using it to preserve the fire curtains in
10 theaters and auditoriums. Fire fighters were
11 heralding the development of asbestos in some of
12 their fire-fighting gear.

13 I remember quite vividly a
14 demonstration or a program in the auditorium when I
15 was in junior high school where the local fire
16 fighters came and demonstrated the miracle
17 advantages of asbestos and the fact that it
18 wouldn't burn, and that it was easy for them to
19 snuff out a fire with a demonstration on the stage
20 in the auditorium.

21 Asbestos was generally regarded back
22 then as kind of this miracle mineral. And the fact
23 that it was incorporated into the Kent filter
24 between '52 and '56, actually, the filter worked

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1 very well to filter out the tobacco smoke.

2 In fact, it worked so well that
3 people likened the experience of smoking Kents back
4 during that time as to sucking on hot air.

5 The cigarette kept going out, plus it
6 was more expensive. So Kent changed the
7 composition of the filter and made the filter more
8 workable to at least allow some tobacco smoke to
9 get through.

10 Q. Your report in that case, was it pretty
11 similar to the report in this case, conceptually?

12 A. It was much different, actually, because
13 it addressed different issues.

14 Q. What did it address?

15 A. It addressed the degree to which, as I
16 recall, Kent, in its marketing of the Kent filter,
17 that they were engaging in a process that was very
18 similar to the manufacturers of other products and
19 services at that time, and the fact that they
20 created a filter and called it the micronite filter
21 was not different from what was going on in a lot
22 of different and other areas in the post World War
23 II era where there was an emphasis on bringing
24 science to bear in the development and creation of

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1 new products and features in product attributes.
2 Q. Was it regarding the asbestos portion of
3 it, was that your focus?
4 A. It was in the creation of the micronite
5 filter and the advertising and marketing of Kent
6 cigarettes.
7 Q. About how many reports have you written
8 in the tobacco area?
9 A. I would think in the neighborhood of
10 maybe 25 or so.
11 Q. Have you written reports in other product
12 areas involving litigation or potential litigation?
13 A. I was involved in one other case back in
14 1990, but that -- I did not have to write an expert
15 report in that case.
16 Q. Did you testify in it?
17 A. No. Actually, I was deposed.
18 Q. What was it about?
19 A. It was a case involving an infomercial, a
20 program-length commercial, run on an independent
21 television station in Los Angeles.

22 And the case involved a consumer who
23 claimed that he saw a program which made the offer
24 of a free book which gave advice on how money could

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1 be invested at a high rate of return.
2 He watched the program, claimed that
3 he did not see the disclaimer at the beginning and
4 end of the program, had never watched the channel
5 before, happened upon it quite by accident.
6 He requested a copy of the free book;
7 did, in fact, receive a copy of the free book and
8 then proceeded to read the book and invest some
9 money. And it turned out to be a bad investment.
10 And the company that he invested in
11 was out of business and went broke, so he sued the
12 television station for carrying the program which
13 he wanted to hold accountable for having lost his
14 money.

15 Q. He never saw the program?
16 A. Did I ever see the program?
17 Q. He never saw the program?
18 A. Yes, he did. He saw the program, but he
19 missed -- he claimed to have missed the disclaimer
20 at the beginning and at the end of the program. So
21 he only saw the middle where they were talking
22 about, If you want to get higher than passbook
23 savings returns on your money, here were some
24 sources that you could invest your money in and get

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1 much higher rates of return.
2 And they said if you want to find out
3 more, all you have to do is call this number and
4 we'll see that you get a book which will tell you
5 how to go about this investment if you so choose,
6 and it won't cost you anything.
7 And he wrote down the number, he
8 called the number, and he got a free copy of the
9 book.
10 Q. The next cases that you testified
11 regarding were what, or that you were involved in

12 following the Kent micronite filer?
13 A. I was deposed in the Arch Barnes
14 (phonetic) class action case, but did not testify.
15 And then I was deposed twice in the Engel case, and
16 I did testify there. And I was deposed in the
17 Blankenship West Virginia class action case.
18 Q. You have been deposed three times, as
19 best you recall, in tobacco?
20 A. In tobacco --
21 Q. Three different cases, I guess?
22 A. Three different cases, total of four
23 times.
24 Q. Twice in Engel?

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1 A. Twice in Engel, yeah, once in Arch
2 Barnes, and once in Blankenship.
3 I was not deposed in Ierardi, even
4 though I testified back in 1991.
5 Q. You've written reports in approximately
6 21 other cases?
7 A. Yes.
8 Q. I'd like to ask for copies of the reports
9 that you've written in these other cases.
10 A. I'm not sure that I have them for all the
11 cases because a lot of them just went away. I mean
12 I heard nothing about them and did not even -- did
13 not keep copies.
14 Q. Were they all on behalf of tobacco
15 companies?
16 A. Yes, they were.
17 Q. Have you ever written a report on behalf
18 of somebody who smoked cigarettes?
19 A. No, I have not been asked.
20 Q. The company -- the -- Kent was owned by
21 what company?
22 A. Lorillard.
23 Q. Have you done any other work for
24 Lorillard?

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1 A. In some of the instances, some of the
2 cases have multiple defendants. So I would do the
3 work, and I would send a bill to a law firm.
4 And so I don't know, specifically,
5 you know, who paid the bills or what share of the
6 bills.
7 Q. Who's been your biggest customer?
8 A. I'm not sure, to be precise. I really am
9 not.
10 Q. Who do you believe it is?
11 A. Probably Philip Morris, but I'm not sure
12 of that.
13 Q. Most of your dealings with Philip Morris
14 have been for Shook, Hardy & Bacon?
15 A. Either Shook, Hardy & Bacon or with
16 Johnson, Tyler & Purvis.
17 Q. Have all the cases you have been involved
18 in with cigarettes involved smoking injuries?
19 A. I think at some level, yeah.
20 Q. When you say, "at some level," you
21 mean --
22 A. Well, for example, class action cases,

23 and a case where -- restrictions on advertising in
24 baseball stadiums in New York, you know, which
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1 really wasn't individual health-related cases. It
2 was the general issue of whether or not advertising
3 should be allowed in public sporting facilities.

4 Q. Your opinion on that was what, that it
5 should be or should not be?

6 A. That seeing a logo for Marlboro or
7 another brand of cigarettes at a baseball stadium,
8 that there is no evidence to show that this has
9 caused any person to start smoking as a result of
10 exposure to that.

11 Q. How about to keep smoking?

12 A. Same.

13 Q. And it's your view, as I take it, that
14 cigarette advertising plays basically no role in a
15 child beginning to smoke -- a child or a
16 teenager -- beginning to smoke?

17 A. Again, the decision to begin to smoke and
18 start smoking; that is correct.

19 Q. Guys could walk down the street every day
20 and see the Marlboro man looking at them, and it
21 wouldn't play any role in their starting to smoke,
22 in your judgment?

23 A. Well, that was true obviously for lots of
24 people.

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1 Q. But that's your belief?

2 A. Yes.

3 Q. Virginia Slims could appear in every area
4 where a young girl would be walking down the street
5 and wouldn't have any influence on whether or not
6 she began to smoke?

7 A. No, because what's important to young
8 girls in the decision whether they start smoking or
9 not is what's going around them in real life --
10 their peers, their friends, the girls that they
11 would like to be like, that they would aspire to be
12 like or the groups they would aspire to be a member
13 of as part of their own self-image and how they fit
14 in. It's real-life people that have an influence
15 on that decision.

16 And I would point out that, you know,
17 the most popular brand of cigarettes among females
18 is not Virginia Slims, but it's Marlboro. And
19 Marlboro is always associated with having the male
20 or macho appeal because that -- again, that's not
21 the role that advertising plays to get somebody to
22 start smoking. It's there as a message of a brand
23 and a brand that delivers quality time in and time
24 out.

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1 If you're a smoker, Philip Morris
2 wants you to smoke Marlboro, and they'll remind you
3 if you are a Marlboro smoker. Or if you're a
4 Virginia Slims smoker, they're reminding you that
5 Virginia Slims is your brand.

6 Q. Have you ever seen the National Velvet
7 liquor ads?

8 A. I'm not sure if I have or not. You might
9 have to described them a little bit to me to see if
10 you can jog my memory.
11 Q. They have a real good-looking gal in
12 them.
13 A. Okay.
14 Q. Do you think that has any impact on guys
15 drinking that booze?
16 A. Is this for a whiskey, by the way?
17 National Velvet, is that --
18 Q. Yes, sir.
19 A. I would think that people who like to
20 drink, and at least one of their choices for
21 drinking would be whiskey, that ad might influence
22 the brand of whiskey that they drink.
23 Q. You think it might influence a man
24 drinking that brand?

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1 A. It could have that influence. But I
2 would add, again, that if I'd never had a sip of
3 National Velvet whiskey before, and I liked whiskey
4 and I tried it as a result of the ad saying, Well,
5 maybe this is a brand I should try, if I didn't
6 like the whiskey, I don't care how attractive the
7 woman is in the ad, I'm not going back to National
8 Velvet.
9 Q. You think maybe when girls would first
10 try a Marlboro, that the Marlboro man would have no
11 impact on their smoking that cigarette the first
12 time out?
13 A. No. And, again, in comparison to the
14 real-life factors of, you know, the friends that
15 they're smoking the cigarette with or around and
16 the people that they see on a day-in and day-out
17 basis at school, after school, at work, in the
18 neighborhood, I mean these are the people that have
19 the influence on that.
20 Q. How about the brand game fight, though.
21 You've indicated that the -- what's out there does
22 have a role in the brand fight, right?
23 A. Yes, a definite role and a very important
24 role.

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1 Q. And in that role, as you see it, would
2 the Marlboro man up there on the big billboard have
3 any swaying force in getting a young lady to smoke
4 Marlboros?
5 A. If she was already smoking, probably more
6 of an influence on the brand that she chose to
7 smoke would be two things: One is her own personal
8 satisfaction or lack thereof by trying the Marlboro
9 brand, and also whether or not, when she started
10 smoking and continued to smoke, whether or not most
11 of her friends also smoked Marlboro.
12 Q. So you're saying that advertising doesn't
13 play a role in brand loyalty or brand switching?
14 A. That's not at all what I said.
15 What I'm saying is that the role that
16 advertising plays may or may not be extremely
17 influential depending on the individual smoker's
18 circumstances.

19 Q. But I'm -- we don't need to do that, do
20 we?
21 You've just indicated earlier that
22 you thought that advertising was important for
23 brand loyalty and brand switching, right?
24 A. As a general principle, that is
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1 absolutely true.
2 Q. Now, having said that, would the Marlboro
3 man standing up there big and macho have any role
4 in an advertiser's mind in getting women,
5 particularly young women, to switch to Marlboro or
6 to remain loyal to Marlboro?
7 A. Certainly to remain loyal to Marlboros.
8 Q. How about switching to Marlboros?
9 A. Maybe a lesser role there, again,
10 depending on individual circumstances.
11 But what the Marlboro advertising
12 does is it reinforces the idea of Marlboro quality,
13 and it reminds smokers of Marlboro quality. And it
14 especially reminds Marlboro smokers of, in a sense,
15 the agreement that's been established between the
16 Marlboro brand and Marlboro's customers.
17 Q. What did the Marlboro man remind them of?
18 A. He's just been the image that's been
19 associated over the years with the Marlboro brand.
20 If represents kind of a shortcut.
21 Q. What is that image?
22 A. It's the image that stems from the
23 introduction of the Marlboro campaign, which was
24 the tag line, A taste that's as big as all
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1 outdoors. And they went to the outdoor scene --
2 Q. What was the underlying message?
3 MR. PROCTOR: I'm sorry. I'll object.
4 If you could please let the witness finish the
5 response to your question before you go ahead
6 and ask the next question.
7 BY MR. SMITH:
8 Q. Go ahead and finish, Dr. Meyer. I
9 thought you were done.
10 A. And the other slogan of, Come to Marlboro
11 country, come to where the flavor is, and, again,
12 the idea of finding a metaphor -- in this case,
13 outdoor scenes and showing scenes outdoors were
14 people are in these outdoor settings. And that
15 became associated with the Marlboro brand.
16 Q. You're an expert in advertising; you've
17 done a lot of studies on that, right?
18 A. Yes, I have.
19 Q. I'm asking you the question, What does
20 the Marlboro man really represent to young men and
21 women?
22 MR. PROCTOR: Objection. Asked and
23 answered.
24

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1 BY MR. SMITH:
2 Q. In your opinion, what did it really
3 represent? What was the deep down item that the

4 Marlboro man represents, in your opinion?
5 MR. PROCTOR: Same objection.
6 You may answer.
7 THE WITNESS: I think it means different
8 things to different consumers at different
9 points in time. I mean that's very difficult
10 to say in terms of any generalizations.
11 BY MR. SMITH:
12 Q. I'm asking about the young man and the
13 young woman. What was the Marlboro man in that
14 beautiful outdoor setting; why was he present?
15 A. It was part of the advertising and part
16 of the image that Marlboro had selected.
17 Q. And what was his role in that image?
18 A. That was an outgrowth of Marlboro's
19 desire to go from, essentially, a cigarette that
20 was positioned to reach female smokers, and they
21 wanted to get more of the male smoking market. So
22 they came up with something that would appeal to
23 men smokers.
24 And they went through a series of
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1 images. They had a deep-sea diver, they had a man
2 wearing a business suit, they had men in different
3 contexts, various professional and occupational
4 contexts.
5 One of the ones they selected was the
6 cowboy. And when the cowboy ad ran, they got a
7 particularly good response to that and pretty much
8 decided that that was going to be part of the image
9 that they ultimately went with to represent a male
10 or macho image.
11 Q. What was the image they had before that
12 attracted women?
13 A. It was in terms of the -- I think in
14 terms of the advertising and the packaging, it was
15 much more of a feminine approach.
16 And this was also at a time back in
17 the early to mid-1950s, when the concern with
18 cigarette companies was that men would not see
19 filtered cigarettes as being a manly kind of thing
20 to do.
21 The perception was that filtered
22 cigarettes were for females. And so if they wanted
23 to sell their brand of filtered cigarettes, which
24 originally had been positioned to reach females and
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1 connect with female smokers -- the reason for that
2 was -- is that a lot of females were smoking
3 filters; men still weren't. And then they decided
4 that -- when filters were catching on with men, that
5 they wanted part of that business among smokers.
6 So as smokers were switching from
7 regular to filtered cigarettes, they wanted it to
8 be the Marlboro brand. And if your past image is
9 it's a women's oriented cigarette, we're going to
10 turn that 180 degrees the opposite as we can. And
11 out of that comes the macho Marlboro man image.
12 Q. Why were they switching -- why were
13 smokers switching to filters?
14 A. I think for a variety of reasons. I

15 think that --
16 Q. Most important one, as you believe it?
17 A. There are a series of important ones.
18 Some very simple reasons are that a
19 lot of people didn't like smoking regular
20 cigarettes because they continually had to deal
21 with bits of tobacco in their mouth, they had to
22 deal with the tobacco stain on their fingers. And
23 the filter helped to get around both of those
24 problems, so it made the actual act of smoking a
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1 lot cleaner.
2 I think, obviously, there were quite
3 a few people who switched to filtered cigarettes
4 because they thought -- they thought the cigarettes
5 were better for them; there would be less tar and
6 nicotine.
7 I think some people switched to
8 filters for another important reason, that they
9 didn't like the harsh, direct taste of an
10 unfiltered cigarette. They liked what the filter
11 did, which was give them some smoking pleasure, but
12 not necessarily some the harsh taste of tobacco
13 that they were getting from the regular cigarette.
14 Q. Did advertising play a role in those
15 items?

16 A. In the switching to the filtered
17 cigarettes?
18 In the switch to filters, yes. But
19 it was like advertising usually does. Advertising
20 follows the trends of behavior that are already
21 taking place in the marketplace.
22 As people began to switch more and
23 more to filtered cigarettes, the advertising then
24 began to reflect that in terms of putting out
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1 filtered brands and then spending a lot of their
2 advertising dollars on the filtered brands to the
3 exclusion of the unfiltered brands.
4 Q. Did advertising play a real in getting
5 people to switch to filters?
6 A. Yes, somewhat of a role, sure.
7 Q. Did it play a further role in the brand
8 fight, as you've described it?
9 A. Oh, absolutely. And as a majority of
10 smokers -- by the time we get to 1960, this is the
11 first time at which a majority of smokers are now
12 smoking a filtered versus an unfiltered brand.
13 So most of your -- the majority of
14 the business is now going to be in the filtered
15 cigarette part of the market, and so the
16 competition among the filters then really takes off
17 at this point. And that's when we see the
18 emergence of Winston and, later on, Marlboro and
19 Viceroy and the other filtered brands including
20 Kent.
21 Q. You have been involved in court
22 appearances for the tobacco industry for about 10
23 years?
24 A. Well, I had the one case for Lorillard in
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1 the Kent filter case in '91.

2 Q. And then the next time you appeared would
3 have been about when, or the next time you were
4 involved in a court case?

5 A. Involved in a case in court?

6 Q. Yes.

7 A. That would have been the Engel case last
8 year, in 2000, in February.

9 Q. The rest of it was just all reports?

10 A. Writing reports and affidavits, yes.

11 Q. They would have been court cases, but you
12 didn't have to testify; is that your understanding?

13 A. That is correct with the exception of the
14 Blankenship case, in which I was deposed, and Arch
15 Barnes, in which I was also deposed.

16 Q. Approximately how much money have you
17 been paid by the tobacco industry for the work you
18 have done for them?

19 A. Over what period?

20 Q. Since you started in '88.

21 A. Since I started, it's about -- over the
22 last 14 years, about \$900,000.

23 Q. And approximately how much have you been
24 paid in the last four or five years?

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1 A. Last four or five years, probably 400 to
2 500,000.

3 Q. And the last two years, approximately?

4 A. Last two years about \$230,000.

5 Q. And your salary from the university is
6 approximately how much a year?

7 A. \$90,000.

8 Q. And when it comes to the amount of time
9 that you have to devote to either the university or
10 work that you do for the tobacco industry,
11 approximately what would be the percentages?

12 A. Well, I generally work, on average,
13 between 12 and 14 hours a day. I put at least, you
14 know, at least 8 hours in or so involvement with my
15 university work, if not more. And I also work on
16 the weekends as well.

17 Q. An average week for you involves
18 approximately how many hours of work?

19 A. I would guess anywhere between 75 to 80
20 or more.

21 Q. And how many months a year -- how many
22 weeks a year do you teach?

23 A. I teach in the fall semester and the
24 spring semester. They're each approximately 15 to

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1 16 weeks long.

2 Q. Those are the two semesters you teach in?

3 A. Yes.

4 Q. So over the whole year, how many hours of
5 work would you estimate you put in including both
6 the tobacco and the school?

7 A. Well, if you -- I've never really sat
8 down and figured it out. Again, long days, seven
9 days a week, including a lot of holidays. So it's
10 an enormous number of hours total.

11 Q. Best estimate, please?
12 A. Whatever 70 times 50 would be.
13 Q. 3500 a year?
14 A. I think it's probably more than that. 70
15 sometimes 50 would be -- 3,500.
16 Q. 3500 a year?
17 A. Yeah, between 3500 and 4,000 hours a
18 year.
19 Q. And approximately how many of those would
20 be for the university?
21 A. In many instances, it's kind of hard to
22 separate because when I'm dealing with issues
23 surrounding advertising, and even if it's
24 specifically with tobacco advertising, that plays a
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1 role in the courses that I teach.
2 So when I'm doing research and
3 looking -- reading through the journals and these
4 kinds of things, it's serving a dual purpose at the
5 same time.
6 Q. Help me with that.
7 A. Well, part of the value of what I teach
8 is that the work that I do in consulting -- not
9 only for the tobacco industry but for other
10 industries as well -- the time that I spend on that
11 also finds -- what I do also finds its way into the
12 classroom in terms of examples and in terms of
13 issues that it's raised and concerns and things
14 that we talk about in class.
15 Q. When you do consulting for Allstate, what
16 kind of work do you do for them?
17 A. This is something this I did back in -- I
18 think 1986, 1985.

19 This was with regard to some of the
20 research I had done in -- in the Hispanic community
21 in San Antonio where we had surveyed a large number
22 of Mexican Americans living in San Antonio and had
23 looked at their consumer behavior and their media
24 preferences.

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1 And what Allstate was concerned about
2 was whether or not they were effectively meeting
3 the needs of and/or overlooking the needs of the
4 Mexican American community in the kinds of
5 insurance benefits and things that they might be
6 looking for in insurance policies.

7 Q. Does most of your work for these
8 companies deal with how they can better sell their
9 product?

10 A. Actually, in some of the cases, that is
11 true. But in other cases, it's how the work force
12 can interact in the workplace to be more productive
13 and more effective.

14 And this is part of my background
15 that relates to what is called organizational
16 communication or workplace communication.

17 Q. Are you doing any of that kind of work
18 now?

19 A. Not within the last couple of years, no.

20 Q. The last couple of years, have you done
21 any work for anyone other than the tobacco

22 industry?
23 A. Yes, I have. I have provided some expert
24 advice in consulting for a couple of local
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1 businesses in Green Bay, former students that work
2 there. I've provided advice for an insurance
3 agency in Green Bay.
4 Q. These were about how long ago?
5 A. The insurance company, for example, that
6 was a year and a half ago.
7 Q. Approximately how much were you paid for
8 that?
9 A. Actually, I'm not paid for a large part
10 of these things. I do this free of charge kind of
11 as a service to my former students to help them
12 out.
13 Q. In the last two years, have you received
14 pay from anyone other than the tobacco industry and
15 the university?
16 A. Yes.
17 Q. That would be from whom?
18 A. It was through Virginia Commonwealth
19 University.
20 Q. What did you do?
21 A. This was a project involved in creating a
22 CD-ROM and a companion workbook for a statewide
23 project dealing --
24 Q. Approximately how much were you paid?
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1 A. I was paid \$6,000.
2 Q. I notice in your professional consulting,
3 I don't see the tobacco companies listed here, but
4 I might be missing it on my list. Maybe I'm not
5 reading it right.
6 A. No, they are not listed.
7 Q. Are they people that you consider
8 professional consulting clients?
9 A. Because my consulting for the tobacco
10 industry has always been through law firms and
11 through the lawyers that I work for.
12 Q. You don't list them?
13 A. No. I haven't listed the law firms
14 either, no.
15 Q. Are there any other people you consult
16 for that you don't list?
17 A. Yeah. I haven't listed some of the --
18 again, some of the, quote, "free consulting" that I
19 do for companies that my former students work for.
20 Q. But other than that, there is no one that
21 you haven't listed that you get paid for other than
22 the tobacco industries; is that correct?
23 A. Yes. Other than this Virginia project
24 that I just mentioned, yes.
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1 Q. Of all the work you've done outside the
2 university, from what clients have you received the
3 most money?
4 A. That would be the tobacco industry.
5 Q. All these other clients combined, have
6 they paid you as much money as the tobacco industry

7 has?
8 A. No.
9 Q. All of the others combined would have
10 paid you about how much? A range you're
11 comfortable with, please.
12 A. Hard to say. I would guess in the
13 neighborhood of 150 to maybe \$200,000.
14 Q. And the checks you received for the work
15 that you do for the tobacco industry, are they
16 attorneys' checks?
17 A. Yes, they are.
18 Q. You don't get checks that have tobacco
19 companies' names on them?
20 A. That is correct.
21 Q. You get checks from Shook, Hardy & Bacon?
22 A. Yes.
23 Q. You get checks from -- what's the other
24 law firm?

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1 A. Johnson -- it would be Johnson, Tyler &
2 Purvis.
3 Q. Any others?
4 A. Winston & Strawn.
5 Q. Those are the three?
6 A. And Dechert, Price & Rhoades.
7 Q. Those four?
8 A. I think that's it.
9 Q. Do they ever tell you the name of the
10 tobacco company you're working for?
11 A. They've never mentioned it specifically
12 and I've never asked.
13 Q. You don't know in these cases?
14 A. No -- if it's a case that only involves
15 Philip Morris, sure. But, as I say, most of them
16 have multiple defendants, multiple companies
17 named.
18 Q. Your rate that you charge is what?
19 Do I have your compensation sheet in
20 here?
21 A. Yes, it's in there. I think it's on the
22 second page of the expert report right near the top
23 of the page.
24 Q. 175 and 225?

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1 A. That's correct.
2 Q. When you say, "review of documents and
3 materials," that means what?
4 A. Reading depositions, reading reports and
5 journal articles and things that -- new things that
6 come out.
7 Q. These journal articles you read that you
8 talked about while you're at school, would they be
9 included in that?
10 A. Oh, sure.
11 Q. How much have you been paid approximately
12 in this case so far?
13 A. To date, I have billed for \$9,200.
14 Q. Do you recall how much you were paid on
15 the Engel case?
16 A. I believe it was \$75,000.
17 Q. And the Barnes case?

18 A. I don't remember that.
19 Q. Blankenship?
20 A. Blankenship was about \$7500.
21 Q. Was Engel the biggest?
22 A. Yes.
23 Q. I'd like to ask you for the case number
24 and court and approximate date of these cases that
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1 you have been involved with.
2 And by that I would mean the ones
3 that you've listed that you have been deposed or
4 you testified in court, and the cases where you've
5 written these reports as well. I'd like to ask for
6 them.

7 A. Okay. I'm not sure that I have -- that I
8 have all of that information.

9 And, again, for the ones that are
10 listed here where I've been deposed or testified, I
11 think I can get those.

12 MR. PROCTOR: Russ, we will certainly
13 provide you with a list of the cases in which
14 he has testified in court or been deposed in
15 within the last four years, if we have not
16 done so already, pursuant to --

17 MR. SMITH: I have the names of them,
18 Craig, and the court. I do not have the case
19 number or the year.

20 MR. PROCTOR: Okay.

21 BY MR. SMITH:

22 Q. In your doctor's degree, you had a minor
23 in social psychology?

24 A. That's correct.

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1 Q. What is social psychology?

2 A. Social psychology is the study of human
3 behavior, how people interact and behave in various
4 social contexts.

5 MR. PROCTOR: Russ, this is Craig. Just
6 a quick time check. We're not -- time is not
7 up, but it's about 5:00 o'clock, and obviously
8 we took a break as well. But I just wanted to
9 notify you that --

10 MR. SMITH: Yes, sir.

11 MR. PROCTOR: -- we're somewhere in the
12 neighborhood of the four-hour limitation.

13 BY MR. SMITH:

14 Q. The College of William and Mary of
15 Virginia where you were a visiting professor --

16 A. Yes.

17 Q. -- when were you there?

18 A. This would have been 19 -- might have
19 been 1990, 1991. I did a -- I did a guest lecture
20 in a marketing class.

21 Q. Do you recall what the topic was?

22 A. No, I don't, actually.

23 Q. How long were you there, just for a day
24 or --

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1 A. Yes, I was there for a -- it was a
2 special event that -- actually held in connection

3 with the state of Virginia called the Communicator
4 of the Year award.
5 And it was -- it's an award presented
6 to a professional communicator. It was
7 cosponsored, I believe, by Virginia Commonwealth
8 University and a couple of other universities.
9 And in conjunction -- I was there for
10 the event, and I also -- I did a lecture at
11 Virginia Commonwealth and also lectured to a
12 communications -- an advertising campaigns class at
13 William and Mary.
14 Q. At the same time?
15 A. In the same trip, yes.
16 Q. Were you -- who received the award?
17 A. A gentleman by the name of James Batten,
18 who at the time was the chief executive officer for
19 Knight Ridder, the newspaper chain, with corporate
20 headquarters in Miami.
21 He was an alumnus of -- I think of
22 University of Virginia or maybe Virginia
23 Commonwealth. And he was being honored as the
24 person -- Communicator of the Year and elected to
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1 the Virginia Communication Hall of Fame.
2 Q. And who invited you?
3 A. The director of the school of mass
4 communication at Virginia Commonwealth.
5 Q. Who was that?
6 A. His name is Thomas Donohue.
7 Q. Have you ever worked with him on
8 anything?
9 A. Yes.
10 Q. What was that?
11 A. I've done some research with him.
12 Q. What type of stuff, please?
13 A. There are a couple of items listed in my
14 resume' that I've coauthored with him.
15 Q. Research paper awards?
16 A. If you look under Journal Articles --
17 Q. Yes.
18 A. The first one there, Perceptions and
19 Misperceptions of Political Advertising, I believe
20 we coauthored. I know the next one for sure, How
21 Black Children See TV commercials.
22 Q. How about the one further down, Tobacco
23 Advertising on Trial, what was that all about?
24 A. It's single-authored. I am the only
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1 author on that.
2 Q. What was it about?
3 A. What it was, it's actually a paper that
4 was written initially back in 1991. It was
5 presented at a History of Marketing conference, and
6 then attracted the attention of a journal editor.
7 He asked me if I would submit it for publication to
8 the journal.
9 It's basically a look at how I
10 thought that the process of trying tobacco cases
11 where advertising was involved, how the process
12 could be improved to the point where there was more
13 effective information communicated about the role

14 that advertising played in the life of an
15 individual smoker.

16 Q. And you think the tobacco companies were
17 getting unfair treatment?

18 A. Not that at all. Actually, the concern
19 in the article was that I thought that everyone
20 would be helped, but primarily the judge and the
21 jury would be in a situation where they could --
22 they could more fairly evaluate and understand by
23 learning more about the entire context in which
24 advertising appears.

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1 Q. And it was primarily with the brand
2 fight?

3 A. That was part of it. But also part of --
4 one of my recommendations, for example, was that,
5 you know, if you pull ads out of Time Magazine in
6 1953 and all you see are cigarette ads from 1953, I
7 thought it would be useful for a jury to actually
8 take a look through an actual Time Magazine from
9 1953 in which that cigarette ad appeared and also
10 for them to see the kinds of articles that were in
11 Time Magazine, also see the ads for all the other
12 products and services to get an idea for whether or
13 not the cigarettes ads, in terms of advertising
14 style, whether or not they were atypical or typical
15 or out of the ordinary or unusually good or
16 appealing or whatever.

17 And I just thought it would be very
18 useful because in my intensive research and
19 examination of cigarette advertising over the
20 years, I've looked at not only the cigarette ads,
21 but also looked at the actual magazines in which
22 they appeared and paid particular attention to the
23 content and styles and approaches and appeals that
24 were in ads for other products and services at the

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1 time.

2 I thought it would be very useful for
3 juries to get a more complete picture of what it
4 was like for someone reading a magazine and running
5 across an ad or a series of ads and articles back
6 in 1953 or whatever time period you wanted to take
7 people back to.

8 Q. How about the one up above a little bit,
9 Visual Images and Product Associations in Magazine
10 Ads for Alcohol and Tobacco: A Study of Consumer
11 Perceptions?

12 A. Yes.

13 Q. Is that similar to the one we just talked
14 about?

15 A. No. This was what we refer to as an
16 empirical study.

17 What I did here was I took a series
18 of ads for cigarettes and for alcohol and was able
19 to mask any reference to either the brand of
20 cigarettes or the brand of alcohol being
21 advertised, so all that was left was the images
22 that were used in the ad.

23 Then I showed the images where the
24 students that I used looked at the images. Then I

1 asked them to guess what it was an ad for, what
2 kind of product or service; and then when they saw
3 the image, asked them, Why do you think the
4 advertisers included this image, What do they want
5 you to associate this image with.

6 And then I showed them the actual ad
7 where it was clear that it was either a cigarette
8 ad or an ad for alcohol, and then I asked them
9 again the same questions to see whether or not --
10 if they saw that it was a cigarette ad, that they
11 would see any different associations than they saw
12 when they weren't sure, if at all, what it was an
13 ad for.

14 Q. The -- have you helped the tobacco
15 companies at all in their advertising, given any
16 advice for what they ought to do advertising wise?

17 A. No.

18 Q. None whatsoever?

19 A. None whatsoever.

20 Q. You have been involved strictly in
21 litigation with them?

22 A. Strictly in litigation.

23 MR. SMITH: Okay, I guess I have used my
24 time. Would you -- I assume you're not

1 waiving signature?

2 MR. PROCTOR: No, he's not. He'll read.

3 MR. SMITH: And, Stacy, I'd like to get a
4 copy as soon as you conveniently can get me
5 one, please.

6 MR. PROCTOR: Russ, I think I'll have
7 three questions.

8 MR. SMITH: Yes, sir.

9 MR. PROCTOR: Stacy, if you can mark
10 this --

11 MR. SMITH: I'm going to object. Let the
12 record show I'm objecting, but go ahead.

13 MR. PROCTOR: Sure. And subject to your
14 objections, if you could mark this as the next
15 exhibit, please.

16 (Whereupon, Dr. Meyer
17 Exhibit No. 3 was marked
18 for identification.)

19 MR. PROCTOR: I've had the court reporter
20 mark as Exhibit 3 a document that's 14 pages
21 long entitled Dr. Meyer's Reliance List, which
22 I will represent for the record is a copy of a
23 fax that was sent to Mr. Smith's office a
24 couple of hours ago today. And I just want to

1 ask the witness a couple questions on this
2 reliance list.

3 MR. SMITH: I object, but go ahead.

4 EXAMINATION

5 BY MR. PROCTOR:

6 Q. Professor Meyer, are you relying upon
7 each and every one of these documents contained in
8 this 14-page reliance list in support of your
9 expert testimony or expert opinions in this case?

10 A. Yes.
11 Q. And, Professor Meyer, are the conclusions
12 contained in the periodicals and other materials
13 contained in this reliance list redundant of or
14 repetitive of the conclusions contained in other
15 reliance materials already cited in your expert
16 report or reliance list that was submitted to
17 Mr. Smith on May 15th, 2001?

18 A. Yes, they are.

19 MR. SMITH: Excuse me one second.

20 For the record, I would object and
21 move to strike all three questions, including
22 the exhibit. Go ahead.

23 BY MR. PROCTOR:

24 Q. Professor Meyer, are each and every one
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1 of the materials listed on this 14-page reliance
2 list publicly available?

3 A. Yes.

4 MR. SMITH: Same objection.

5 MR. PROCTOR: I have no further
6 questions.

7 (AND FURTHER DEPONENT SAITH NOT)

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4

5

JOCELYN TOMPKIN,)

6

Plaintiff,)

7

vs.)

8

THE AMERICAN)

9

TOBACCO COMPANY, et al.,)

10

Defendants.)

CIV. ACTION NO.
5:94-CV-1302

10

11 This is to certify that I have read the
12 transcript of my deposition taken in the above-
13 entitled cause by ANASTASIA MAROS, Certified
14 Shorthand Reporter, on the 18th day of June 2001,
and that the foregoing transcript accurately states
the questions asked and the answers given by me as
they now appear.

15

16 TIMOTHY P. MEYER, Ph.D.

17

18 No corrections (please initial):
19 Number of errata sheets submitted:

20

21

22

23 SUBSCRIBED AND SWORN TO
before me this day
of , 2001.

24

Notary Public
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4 I, Anastasia Maros, Certified Shorthand
5 Reporter License No. 084-003213, a notary public
6 within and for the County of Cook and State of
7 Illinois, do hereby certify that heretofore,
8 to-wit, on the 18th day of June 2001, personally
9 appeared before me, at O'Hare Hilton Hotel, in the
10 City of Chicago County of Cook and State of
11 Illinois, TIMOTHY P. MEYER, Ph.D., a witness in a
12 certain cause now pending and undetermined In The
13 United States District Court For The Northern
14 District Of Ohio, Eastern Division, wherein Jocelyn
15 Tompkin is plaintiff and The American Tobacco
16 Company, et al., are defendants.
17 I further certify that the said witness was
18 first duly sworn to testify the truth, the whole
19 truth and nothing but the truth in the cause
20 aforesaid; that the testimony then given by said
21 witness was reported stenographically by me, to the
22 best of my ability, in the presence of the said
23 witness, and afterwards reduced to typewriting by
24 Computer-Aided Transcription, and the foregoing is
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1 a true and correct transcript of the testimony so
2 given by said witness as aforesaid.
3 I further certify that the signature of the
4 witness to the deposition was not waived.
5 I further certify that the taking of this
6 deposition was in pursuance of agreement; and that
7 there were present at the taking of this deposition

8 the attorneys as hereinbefore noted.
9 I further certify that I am not counsel for
10 nor in any way related to the parties to this suit,
11 nor am I in any way interested in the outcome
12 thereof.

13 In testimony whereof I have hereunto set my
14 hand and affixed my notarial seal this
15 day of , 2001.

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Notary Public, Cook County, Illinois

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